182.

SUPREME COURT OF THE UNITED STATES.

No. 130.

JOHN DOE, EX DEM. SAMUEL PHILLIPS AND AL., PLAINTIFF IN ERROR,

vs.

GEORGE V. HOWK AND AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office in the cause within named.

In testimony whereof, I have hereunto subscribed my name officially, and affixed the seal of said circuit court, at the city [SEAL.] of Cleveland, in said northern district of Ohio, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States of America the eighty-third.

F. W. GREEN, *Clerk.*

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GIDEON, Print.

Pleas of the Circuit Court of the United States for the seventh judicial circuit and district of Indiana, begun, continued and holden before the Hon. Elisha M. Huntington, judge of said district, on the fifth day of December, in the year of our Lord one thousand eight hundred and fifty-four, that being the fourteenth judicial day of the November term of said United States circuit court, held at Indianapolis, in said district.

JOHN DOE, Ex dem. SAMUEL PHILLIPS,
vs.
RICHARD ROE. } Ejectment.

Be it remembered, that heretofore, to wit, the plaintiff, by his attorney, filed in the clerk's office of said court his certain declaration in ejectment, against the said Richard Roe, with notice to the tenant in possession, to wit, on the 18th day of November, in the year 1847, which declaration is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Indiana.

In the Circuit Court of the United States for said district.

John Doe complains of Richard Roe, in ejectment, for that heretofore, on the 1st day of January, 1847, Samuel Phillips, William Phillips, Richard Phillips, (a son of Thomas Phillips,) Richard Phillips, (a son of Samuel Phillips,) Presley Phillips, Shapley Phillips, Susan Grey, Elizabeth Tucker, Catharine Hert, and William Hert her husband, in right of his wife, Mary Ann Shriley, and Cyrus Shriley, her husband, in right of his wife, Nancy E. Hert, and Beneger Hert, her husband, in right of his wife, Jenkin P. Robinson and David Hunter, her husband, in right of his wife, Abraham Hunter, James Hunter, Joseph Hunter, Maria Hunter, Elizabeth Hunter, David Hunter, (a son of Joseph Hunter, deceased,) Milford Hunter, Thomas Hunter, Hannal Stalcup, and Mark H. Stalcup, her husband, in right of his wife, Mary Gibbory, and Andrew Gibbory, her husband, in right of his wife, all of whom are citizens and residents of the State of Missouri; Sarah Ann Phillips, Samuel Phillips and Mary Eliza Phillips, Thomas Phillips, Mary Ann Swingler, and James Swingler, her husband, in right of his wife, Maria Stewart, and Weden Stewart, her husband, in right of his wife, Elizabeth Phillips, Thomas Phillips, Thomas J. Phillips, Mary Phillips, Richard Phillips, Henry Phillips, Murray Phillips, Ann Rudd, and James Rudd, her husband, in right of his wife, Hannah Dubberly, Lydia Clark and Ludlow Clark, her husband, in right of his wife, all of whom

are citizens and residents of the State of Kentucky; Nancy Hamilton, and Darius Hamilton, her husband, in right of his wife, both of whom are citizens and residents of the State of Mississippi; George Riley, Camden Riley, William Riley, Martha Hathaway, and John Hathaway, her husband, in right of his wife, Lydia Phillips, and Richard Phillips, in right of his wife, all of whom are citizens and residents of the State of Kentucky; Louisana Riley, and Amos Riley, her husband, in his own right, and in right of his wife, both of whom are citizens and residents of the State of Missouri—jointly and severally demised to said Doe that parcel of land in Clark county, in said district of Indiana, which is known as lot 12 of the Illinois grant, containing 500 acres, more or less, with the appurtenances to said Doe, to have and hold said land and appurtenances to said Doe, and his assigns, for the term of fifty years, then next following; by virtue of which demise, said Doe afterwards, on said day, entered into the possession of all of said land; and still afterwards, on said day, said Roe, with force and arms entered upon all of said lands and ejected said Doe therefrom, to his damage $1,000. Wherefore he sues, &c.

R. CRAWFORD,
Att'y for Pl'tff.

On which declaration was the following endorsement, to wit:

To John M. Espy, George Espy, Sarah J. Espy, Sarah Espy, John Gilmore, Milton Hay, George Howk, Margaret S. Howk, who are citizens and residents of said district of Indiana:

I am informed that you are jointly or severally in possession of all or some of the lands in the above declaration described, or claim some title thereto, and I being sued in this action as a casual ejector only, and having no title to any of said land, advise you to appear in said United States circuit court for said district on the first day of its next term, and cause yourselves to be made defendants in my stead, else I shall suffer judgment to be entered against me by default, and you will be turned out of possession.

RICHARD ROE.

Aug. 13th, 1847.

STATE OF INDIANA,
Clark County, ss.

Personally before the undersigned, a justice of the peace within and for said county, comes Calvin T. Solace, of lawful age, and makes oath that on the 1st day of September, A. D. 1847, he made service of the foregoing and attached declaration and notice in ejectment on John M. Espy, Sarah Espy, Sarah J. Espy, John Gilmore, George Espy, and Milton Hay, tenants in possession of some of the lands in the declaration described, by delivering a copy (of) declaration and notice to each of said persons, except

George Espy and Sarah J. Espy, and reading and explaining the same to them severally, and by leaving a copy thereof with the wife of said George Espy, at his dwelling-house and usual place of residence, reading and explaining the same to her; and by leaving also a copy of said declaration and notice with the mother of said Sarah J. Espy, at the usual place of residence of Sarah J., reading and explaining the same to her. That on the 6th day of September aforesaid he made service of said declaration and notice upon George Howk and Margaret S. Howk, also tenants in possession of some of said land, by delivering a copy thereof to said George Howk, reading and explaining the same to him; and by leaving a copy thereof at the usual place of residence of said Margaret S. Howk with her mother, and reading and explaining the same to her. That said several persons are in possession, or claim to be in possession, of all or some of the lands in the said declaration described. And further says not.

C. T. SOLACE.

Sworn to and subscribed this 25th day of September, A. D. 1847, before me.

WILLIAM MORROW, [SEAL.]
Justice of the Peace.

I, Eli McCalley, clerk of Clark circuit court, in the State aforesaid, certify that William Morrow, esq., before whom the foregoing affidavit was made and whose certificate thereof, signed by him in his own proper handwriting, is thereto annexed, was at the time of making and certifying said affidavit an acting justice of the peace in and for said county; that full faith and credit are due to his said official acts.

In testimony whereof, I hereto subscribe my name and affix the seal of said court, at the court-house in Charleston, the 25th day of Sept., A. D. 1847.

ELI McCALLEY, *Clerk.*

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis, in the district of Indiana, before the Hon. Elisha M. Huntington, judge of said court, on the 18th day of November, in the year 1847, that being the 4th judicial day of the November term of said court.

In the Circuit Court of the United States for (the) district of Indiana.

JOHN DOE, Ex dem. SAMUEL PHILLIPS,
vs.
RICHARD ROE.

It is ordered by the consent of the attorneys for both parties that George V. Howk, Margaret S. Howk, John M. Espy, George

Espy, Sarah Espy, Sarah J. Espy, John Gilmore, and Elonz Howk, be made defendants, instead of said Roe, and do forthwith appear at the suit of said plaintiff and receive a declaration in ejectment for the premises in question, and plead thereto "not guilty," and on the trial confess lease, entry, and ouster, and that they were in possession of said premises at the commencement of this suit, and insist upon the title only. If they do not so confess, judgment shall be entered against said Roe by default, and persons now made defendants shall pay costs in such case to be taxed; and if for any other cause than not confessing as aforesaid, judgment shall be given against said Doe, his lessors shall pay costs to said defendants.

R. CRAWFORD,
Att'y for Pl'tff.
CHARLES DEWEY,
Att'y for Def't.

And by agreement this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis, in the district of Indiana aforesaid, before the Hon. John McLean, one of the associate justices of the Supreme Court of the United States, on the 29th day of May, in the year 1848, come the parties, and by their agreement this cause is continued until the next term of this court.

And afterwards, to wit, at the November term of said court for the year 1848, present the Hon. Elisha M. Huntington, judge as aforesaid. And said cause was continued from term to term until the November term of said circuit court, 1849. Present the same judge as last aforesaid. Come the parties, and on motion of Charles Dewey, esq., attorney for the def't, and on his motion, depositions herein are ordered to be published, and day is given the parties.

And on the third judicial day of the same term last aforesaid, come the parties by counsel, and defendant moves the court to suppress part of the depositions of John Donthill, W. E. Ewing, and Stephen Ormsby, and argument thereon. The court give further day to hear their decision.

And afterwards, to wit, on the 8th judicial day of the same November term of said court, 1849, come the parties, by counsel, and the court being sufficiently advised on the motion heretofore made to suppress depositions, ordered that all of John Donthill's deposition which relates to the books and copies from the books of the commissioner of the Illinois or Clarke's grant, and so much of Joseph Bowers's deposition as relates to the same matter, be suppressed; and that so much of W. E. Ewing's answer as marked in

brackets, and so much of Stephen Ormsby's answer to the first interrogatory marked in the same way, be suppressed ; and day is given the parties.

And afterwards, to wit, on the 16th day of the said November term of said court for the year 1849, before the same judge as aforesaid, come the parties, and by agreement this cause is continued until the next term, at the cost of the plaintiffs; and by like agreement of parties, this cause is continued from day to day, and from term to term, when—

At a circuit court begun and holden at Indianapolis as aforesaid, on the 26th day of May, 1853, before the Hon. Elisha M. Huntington, judge as aforesaid, come now the plaintiffs, by their counsel, and on their motion, they have leave to amend their declaration, and day is given.

And afterwards, to wit, at the same May term of the said court, on the 13th judicial day thereof, come the defendants, by counsel, and upon their motion they have leave to take the deposition of Charles Dewey, a witness in their behalf, de bene esse; and further day is given the parties.

And afterwards, to wit, at a circuit court begun and holden at Indianapolis as aforesaid, before the Hon. H. H. Leavi*ll*, district judge of said court, on the 26th day of November, 1853, come the defendants, and on their motion this cause is continued until the next term of this court, at their cost of the term.

And afterwards, to wit, at a circuit court begun and holden before the Hon. Elisha M. Huntington, judge as first above said, on the 15th day of May, 1854, that being the first judicial day of the said May term of said court, comes now on this day Joseph G. Marshall, attorney for the plaintiffs, and suggests the death of Samuel Phillips, one of the lessors of the plaintiff, and moves the court to order that this suit, as to the interest of the said decea*se*dent, be revived and continued in the name of Thomas L. Phillips, Levin S. Dorsey, and Lydia Dorsey, his wife, formerly Lydia Phillips, Clark S. Phillips, Sally Phillips, and Mannie Phillips, only heirs-at-law of deceased, which is done accordingly; and it appearing to the satisfaction of the court that the three last named persons are infants under the age of 21 years, Thomas L. Phillips is allowed to prosecute this suit for them as prochien ami. And this cause is continued until the next term of this court.

And afterwards, to wit, at a circuit court begun, continued, and holden at Indianapolis, in the district of Indiana, before the Hon. Elisha M. Huntington, judge of said district, on the 23d day of November, in the year of our Lord one thousand eight hundred and fifty-four, that being the fourth judicial day of the November term of said court, come the parties, and the plaintiffs suggest the death of Lydia Clark, one of the plaintiffs' lessors, and that her heirs are Thomas L. Phillips, Lydia C. Dorsey, wife of Levin L. Dorsey,

Clark S. Phillips, Sally Phillips, and Nancy Phillips, who have heretofore been named in this suit as heirs of Samuel Phillips, who also has died since the commencement of this suit; and the jury being called, to wit, Alfred Loder, John Jack, Jacob Lane, James Shipman, Johnson Watts, Robert Slonn, John Lewis, Augustus Handy, Thomas Thompson, Walter March, Henry A. Huntington, and John Hunter, twelve good and lawful men of the district of Indiana, who being empanelled, tried, and sworn to try the issue joined between the parties, and a true verdict give according to the evidence, and after hearing a part of the evidence, by agreement of the parties, separate until to-morrow, 9 o'clock a. m.; and day is given.

And afterwards, to wit, on the 5th judicial day of the same term, present the same judge as last aforesaid, come now the parties, by their attorneys, and the jurors of the jury come also, and after hearing a further portion of the evidence herein, said jurors, under the instruction of the court, and by the consent of parties, are permitted to separate until Monday next, at the hour of two o'clock p. m.; and time is given.

And afterwards, to wit, at the same term of said court, begun, continued, and holden at the same place as aforesaid, and before the same judge as aforesaid, on the seventh judicial day of said term, come now the parties, by their attorneys, and the jurors of the jury come also, and the further hearing of this cause is postponed until to-morrow, at 2 o'clock p. m.; and day is given.

And afterwards, to wit, at the same term of said court, begun, continued, and holden at the same place as aforesaid, on the 8th judicial day of November term of said court, come now the parties, by their att'ys, and the jurors of the jury come also, and after the further hearing of evidence herein, upon their oaths do say and find that the defendants are "not guilty" of the trespass and ejectment laid to their charge in manner and form as the said plaintiffs have complained against them.

And afterwards, to wit, on the 14th judicial day of the same term of said court, before the same judge as aforesaid, come the parties, by their attorneys, and the plaintiffs moved the court to set aside the verdict, and to grant a new trial herein, which motion the court overruled. And the defendants move the court for judgment upon the verdict, whereof mention is hereinbefore made.

It is therefore considered by the court that the said plaintiffs take nothing of their suit, and that said defendants do go hence without day and recover of the lessors of the plaintiffs their costs and charges by them about their defence in that behalf expended, taxed at dollars and cents. And the lessors of the plaintiff now here file their bill of exceptions herein, and ask that the same be signed, sealed, and made a part of the record herein, which is done accordingly.

Ordered by the court, that it be certified that the lands in controversy are worth more than the sum of $2,000. Which said bill of exceptions is in the words and figures following, to wit:

Be it remembered, that on the trial of this suit by the jury the plaintiffs introduced evidence tending to prove that the lessors of the plaintiffs were the only heirs of Jenkin Phillips, who died in the year 1822. The plaintiffs then stated that the defendants claimed title to the land described in the declaration under Hugh Espy, which the defendants did not deny. The plaintiff then introduced evidence that said Espy was in possession of said land in 1830, claiming to own it in fee by virtue of a purchase at a sale for taxes; that he called it the "Phillips tract," or the "Dick Phillips tract;" and said that he did not believe Phillips could show any deed for said land. If he ever had one it was burned at Vincennes.

Plaintiffs then proved that Jenkin Phillips paid the taxes on said land in the years 1810, 1815, and 1816, and that it was sold for taxes in 1812, being taxed that year in the name of Michael Lacassigne, and that all of said land was woodland, and wholly unimproved until after 1827; that the records of the recorder's officer at Vincennes, in Knox county, were burned in the year 1814; that said lands were included within said Knox county until 1802, when the county of Clark was created, and said lands have ever since been included in it.

The plaintiffs then read in evidence to the jury a transcript of a judgment, two writs thereon and the returns thereto, which are in the words and figures following, to wit:

At a court of common pleas, begun and held in the town of Vincennes, in and for the county of Knox, on Tuesday, the sixth day of November, in the year of our Lord one thousand seven hundred and ninety-eight, before Pierre Gamlin, James Johnson, Abel Westfall, and Luke Decker, esquires, Robert Buntin, proth'y, and Christopher Wyant, sheriff.

HENRY HURST, Ass'ee of ROBERT K. MOORE,
vs.
ROBERT K. MOORE and STEPHEN ORMSBY,
Executors of Michael Lacassigne, dec'd.
} Case.—Dam. $3,000.

Be it remembered, that heretofore, to wit, on the day of , A. D. , was filed in the office of the clerk of said court the following declaration, to wit:

Henry Hurst, assignee of Robert K. Moore, complains of Robert K. Moore and Stephen Orsmby, executors of the last will and testament of Michael Lacassigne, dec'd, in custody, &c., for that, to wit, that whereas the said Michael, in his lifetime, on the 21st day of August, in the year 1794, was indebted unto him, the said Henry Hurst, assignee, &c., in the sum of two thousand two hun-

dred and forty-four and two-thirds dollars, current money, for divers goods, wares, and merchandise, by him, the said Henry Hurst, assignee as aforesaid, to him, the said Michael Lacassigne, at his special instance and request, before that time sold and delivered; and being so thereof indebted, the said Michael Lacassaigne, in his lifetime, in consideration thereof, afterwards, to wit, the day and year aforesaid, at the county aforesaid, assumed upon himself and to him, the said Henry Hurst, assignee as aforesaid, then and there faithfully promised that he, the said Michael, in his lifetime, the aforesaid sum of two thousand two hundred and forty-four and two-thirds dollars to him, the said Henry Hurst, assignee as aforesaid, would well and truly consent and pay when he should be afterwards thereunto required. And whereas also the said Henry, as assignee, afterwards, to wit, the same day and year aforesaid, at the county aforesaid, at the special instance and request of him, the said Michael, in his lifetime, had sold and delivered to the said Michael divers other goods, wares, and merchandise, the said Michael, in his lifetime, in consideration thereof, afterwards, to wit, the same day and year and place aforesaid last mentioned, assumed upon himself and to the said Henry Hurst, assignee as aforesaid, then and there faithfully promised that he, the said Michael, so much money as he, the said Henry Hurst, assignee as aforesaid, for the goods and merchandise last mentioned, should reasonably deserve to have to the said Henry when thereunto afterward he should be requested, well and truly pay and content.

And in fact the said Henry says that he, for the goods and merchandise aforesaid last mentioned, reasonably deserves to have of the said Michael other two thousand two hundred (and) forty-four and two-thirds dollars of like lawful money.

Nevertheless the said Michael, in his lifetime, and the said Robert K. Moore and Stephen Ormsby, executors as aforesaid, since his death, the promise and assumption aforesaid, in form aforesaid made, not regarding, but continuing and fraudulently intending him, the said Henry, assignee as aforesaid, in this behalf, craftily and subtly to defraud the aforesaid sum of two thousand two hundred and forty-four and two-thirds dollars, or any part thereof, unto him, the said Henry, hath not paid; although so to do, the said Michael, in his lifetime, and the said Robert K. Moore and Stephen Ormsby, executors as aforesaid, since his death, the day and year aforesaid, at the county aforesaid, by him, the said Henry Hurst, was requested, but the same to pay altogether refused, and still doth refuse, to the damage of the said Henry Hurst, assignee, $3,000.

And therefore he brings suit, &c.

H., *for Pr.*

JOHN DOE
vs. } Pledges.
RICHARD ROE.

And afterwards, to wit, on the 14th day of August, in the year 1798, was issued out of and under the seal of said court the following writ, to wit:

TERRITORY OF THE UNITED STATES
Northwest of the Ohio, Knox, ss.

The United States to the Sheriff of our said county of Knox, greeting:

We command you to summon Robert K. Moore and Stephen Ormsby, executors of Michael Lacassagne, deceased, if they may be found in your bailiwick, so that they appear before our justices of our court of common pleas at Vincennes, in our said county of Knox, on the first Tuesday of November next, to answer unto Henry Hurst, assignee of Robert K. Moore, of a plea of trespass on the case, to the damage of the said Henry $3,000, as is said, and have then there this writ.

Witness Pierre Gamlin, esquire, presiding justice of our said court, at Vincennes, this fourteenth day of August, in the [SEAL.] year of our Lord one thousand seven hundred and ninety-eight.

R. BUNTIN,
Prothonotary.

On the back of said writ is the following endorsement, to wit:

Came to hand the 4th September, 1798. In obedience to the within I have done as directed.

C. WYANT, *Sheriff, K. C.*

And afterwards, to wit, on the 9th day of November, 1798, being the third day of the November term of said court, 1798, the said Robert K. Moore and Stephen Ormsby being three times solemnly called, and not appearing, it is ordered that judgment for their non-appearance be entered, and that a jury be called to assess the damages. Whereupon came a jury, to wit: William Prince, John N. Saly, Ethelred Bass, William Johnson, Albertes Prince, Elias Biddle, Frederick Lindley, John Blackburn, Jacque Condinal, Pierre Bono, Paul Parye and John Westfall, twelve good and lawful men, who being elected, tried and sworn, the truth to speak of and concerning the premises, upon their oaths do say: We of the jury find for the plaintiff the sum of twenty-nine hundred and nine dollars and eighty cents.

Therefore it is considered by the court that the plaintiff recover of the defendant the sum aforesaid, by the jurors in their verdict, in form aforesaid, together with his costs and charges about his

suit in that behalf expended, to be levied of the goods and chattels of the said Michael, in the hands of the said defendant, to be administered, if so much thereof he hath; and the defendants in mercy, &c.

And afterwards, to wit, on the 10th day of November, 1798, was issued from and under the seal of said court the following writ, to wit:

Common Pleas, Knox, ss.

TERRITORY OF THE UNITED STATES
Northwest of the Ohio river.

United States to the Sheriff of said county, greeting:

Whereas Henry Hurst, in the said county aforesaid, lately, in the court of common pleas for the said county, before the justices of the same, recover judgment against the executors of Michael Lacassagne, deceased, for the sum of twenty-nine hundred and nine dollars and eighty cents and costs of suit, whereto the said Henry, in our said court, were adjudged for his damages which he has sustained by reason of the non-performance of the assumption in the declaration mentioned:

And whereas, at the same court, before the same justices, James Wilkinson recovered a judgment against the said executors for the sum of one thousand and nineteen dollars and eighty cents, with interest; likewise one other judgment recovered by John Holher for the sum of eleven hundred dollars; and also one other judgment recovered by Kearney Wharton, for three hundred dollars, which were adjudged to them by reason of the non-performance of the assumption of the decedent; whereof he is convicted of three thousand acres of land, in the Illinois grant, in the county aforesaid, which were the lands and tenements of the said Lacassagne at the time of his death in fee simple.

Execution nevertheless of the said judgment remained to be made; but because it is now known to the said court of what value the said tract of land may be, or whether the rents and profits arising from the said land will pay the amount of the aforesaid judgment in seven years, you are therefore hereby commanded that by the oaths of twelve good and lawful men of your county, you diligently inquire into the value of the aforesaid tract of land, and also inquire whether the rents and profits for seven years will satisfy the aforesaid debts; and the inquisition which you shall thereupon take, you shall make manifest before the justices of the said court in the term of February next, under your seal, and the seal of those by whom you shall have that inquisition, and have you there the names of those jurors, and this writ.

Witness Pierre Gamlin, esquire, presiding justice of the said court, the tenth day of November, seventeen hundred and ninety-eight.

R. BUNTIN, *Proth'y.*

And on the back of said writ is the following endorsement, to wit:

TERRITORY OF THE UNITED STATES
Northwest of the river Ohio, Knox County.

Inquisition held and taken at Richmond, in the county aforesaid, on the third day of December, in the year of our Lord one thousand seven hundred and ninety-eight, before me, Christopher Wyant, esquire, sheriff of the said county, by virtue of a writ of the United States to me directed, and to this inquisition annexed, to inquire of and upon certain matters in the same writ contained, and specified by the oaths of twelve good and lawful men of my bailiwick, who, upon their oaths, say, that the personal estate of which Michael Lacassagne died possessed of was insufficient to satisfy the judgment of the said Henry Hurst, James Wilkinson, John Holher, and Kearney Wharton, expressed in the annexed writ, and the record of the proceedings thereupon previously had against the said defendant, and that the rents and profits of the real estate of which the said defendant possessed, would not in seven years space of time from the present time satisfy said judgment, and also that the personal estate, together with the rents and profits of the real estate for the space of time limited by law, will also be insufficient to satisfy the demands of said plaintiffs.

In testimony whereof, as well I, the said sheriff, as the jurors aforesaid, to this inquisition have put our seals and signed our names, the day and year first above written.

CHRISTOPHER WYANT, [SEAL.]
ROB. GEORY, [SEAL.]
R. FLOYD, [SEAL.]
HENRY FAITE, [SEAL.]
JAMES FURGURSON, [SEAL.]
JS. PRINCE, [SEAL.]
JOHN WILIETERT, [SEAL.]
MARSTON G. CLARK, [SEAL.]
JAS. W. WOOD, [SEAL.]
RANEON BOWMAN, [SEAL.]
JOHN APPLEGATE, [SEAL.]
FREDERICK BOWYER, [SEAL.]
JAMES . [SEAL.]

In obedience to the within writ, I have executed it as directed by the inquisition hereto annexed.

CHRISTOPHER WYANT,
Sh'ff K. C.

And afterwards, to wit, on the 6th day of February, being the second day of the February term of said court, 1799, sci. fie. inqui. returned by the sheriff with the inquisition annexed, which

say that the issue and profits of the lands of Michael Lacassagne will not pay the said judgments, &c., in seven years.

And afterwards, to wit, on the 8th day of February, 1799, was issued, from and under the seal of said court, the following writ, to wit:

THE TERRITORY OF THE UNITED STATES
Northwest of the river Ohio, Knox County, sct.

The United States to the Sheriff of said county, greeting:

You are hereby commanded that of the lands of the late Michael Lacassagne, deceased, in the county and territory aforesaid, you cause to be made the sum of two thousand nine hundred and nine dollars and eighty cents, which Henry Hurst as assignee of Robert K. Moore, lately in our court of common pleas, before the justices of the same, recovered against Robert K. Moore and Stephen Ormsby, executors of the said Michael Lacassigne, deceased, by the non-performance of certain promises and assumptions to the said Henry Hurst made, and also the sum of twenty dollars and seventy-six cents for the costs and charges by the said Henry Hurst, as assignee, &c., about his suit in this behalf expended, whereof the said Michael Lacassagne is convicted, as appears by the records of the said court, and have that money before the justices of the said court, on the first Monday in May next, to render to the said Henry Hurst, as assignee, &c., for his damages and costs aforesaid, and have you then there this writ.

Witness James Johnson, esquire, presiding justice of our said court of common pleas, in the court-house, in Vincennes, on the 8th day of February, in the year of our Lord one thousand seven hundred and ninety-nine.

[SEAL.]

R. BUNTIN,
Prothonotary.

On the back of said writ is the following endorsement, to wit:

In obedience to this writ, I have levied on the lands as within commanded, and made the sum of two thousand nine hundred and thirty dollars and eighty-four cents to satisfy this writ.

April 2d, 1799.

CHRISTOPHER WYANT,
Sh'ff K. C.

STATE OF INDIANA,
Knox County, ss.

I, William McCord, clerk of the circuit court of Knox county, Indiana, do certify that the above and foregoing transcript is a true and complete copy from the records of the court of common pleas in my office, and of the writ of inquest and execution issued from

said court upon the judgment rendered by said court in the above entitled cause.

In witness whereof, I have hereto subscribed my name and affixed the seal of said court, at Vincennes, this 17th [SEAL.] day of October, in the year of our Lord one thousand eight hundred and forty-eight.

W. R. McCORD, *Clerk.*

STATE OF INDIANA,
Knox County, ss.

I, John Law, president judge of the seventh judicial circuit of said State of Indiana, do hereby certify that William R. McCord, whose name is subscribed to the within and foregoing certificate, is clerk of the circuit court of said county, which is a part of said seventh judicial circuit, and that said certificate is in due form of law.

Given under my hand, this 17th day of October, 1848.

JOHN LAW.

The plaintiff then read to the court a part of the deposition of John Donthill, in these words, to wit:

Interrogatory 10. Were you ever recorder of the county of Clark, State of Indiana; if yes, when and how long; did you or not ever see a deed purporting to have been made by the commissioners of said grant, (Illinois,) of them to Michael Lacassagne, for said lot No. 12; was or not any such deed on record in said recorder's office whilst you were recorder?

Ans. I was recorder of said county from 1820 until February, A. D. 1845; I do not know that I ever saw any such deed as is inquired for by the above interrogatory; I do not think any such deed was on record in said office during the time I was recorder of said county.

Interrogatory 11. Look at a paper now shown you, marked "M" and signed by you with your name, and purporting to be a copy of a deed from Christopher Wyant, as sheriff of Knox county, to Jenkin Phillips, for said lot 12 of said grant, and say whether said paper is or not a true copy from the record-book of deeds of said county of Clark in said recorder's office; who recorded said deed in said record-book, and was it or not correctly recorded from the original deed of said Wyant; to whom, if any person, was said original deed delivered after being recorded, and what has become of it?

Answer. I have compared said copy, signed by me, and now shown me, and marked M, for said lot No. 12 of said grant, with the record of deeds as contained in book W, pages 259 and 260, of said recorder's office, and find it is a true and complete copy of said record, taken from said pages. I recorded said original deed

say that the issue and profits of the lands of Michael Lacassagne will not pay the said judgments, &c., in seven years.

And afterwards, to wit, on the 8th day of February, 1799, was issued, from and under the seal of said court, the following writ, to wit:

THE TERRITORY OF THE UNITED STATES
Northwest of the river Ohio, Knox County, sct.

The United States to the Sheriff of said county, greeting:

You are hereby commanded that of the lands of the late Michael Lacassagne, deceased, in the county and territory aforesaid, you cause to be made the sum of two thousand nine hundred and nine dollars and eighty cents, which Henry Hurst as assignee of Robert K. Moore, lately in our court of common pleas, before the justices of the same, recovered against Robert K. Moore and Stephen Ormsby, executors of the said Michael Lacassigne, deceased, by the non-performance of certain promises and assumptions to the said Henry Hurst made, and also the sum of twenty dollars and seventy-six cents for the costs and charges by the said Henry Hurst, as assignee, &c., about his suit in this behalf expended, whereof the said Michael Lacassagne is convicted, as appears by the records of the said court, and have that money before the justices of the said court, on the first Monday in May next, to render to the said Henry Hurst, as assignee, &c., for his damages and costs aforesaid, and have you then there this writ.

Witness James Johnson, esquire, presiding justice of our said court of common pleas, in the court-house, in Vincennes, on the 8th day of February, in the year of our Lord one thousand seven hundred and ninety-nine.

[SEAL.]

R. BUNTIN,
Prothonotary.

On the back of said writ is the following endorsement, to wit:

In obedience to this writ, I have levied on the lands as within commanded, and made the sum of two thousand nine hundred and thirty dollars and eighty-four cents to satisfy this writ.

April 2d, 1799.

CHRISTOPHER WYANT,
Sh'ff K. C.

STATE OF INDIANA,
Knox County, ss.

I, William McCord, clerk of the circuit court of Knox county, Indiana, do certify that the above and foregoing transcript is a true and complete copy from the records of the court of common pleas in my office, and of the writ of inquest and execution issued from

said court upon the judgment rendered by said court in the above entitled cause.

In witness whereof, I have hereto subscribed my name and affixed the seal of said court, at Vincennes, this 17th [SEAL.] day of October, in the year of our Lord one thousand eight hundred and forty-eight.

W. R. McCORD, *Clerk.*

STATE OF INDIANA,
Knox County, ss.

I, John Law, president judge of the seventh judicial circuit of said State of Indiana, do hereby certify that William R. McCord, whose name is subscribed to the within and foregoing certificate, is clerk of the circuit court of said county, which is a part of said seventh judicial circuit, and that said certificate is in due form of law.

Given under my hand, this 17th day of October, 1848.

JOHN LAW.

The plaintiff then read to the court a part of the deposition of John Donthill, in these words, to wit:

Interrogatory 10. Were you ever recorder of the county of Clark, State of Indiana; if yes, when and how long; did you or not ever see a deed purporting to have been made by the commissioners of said grant, (Illinois,) of them to Michael Lacassagne, for said lot No. 12; was or not any such deed on record in said recorder's office whilst you were recorder?

Ans. I was recorder of said county from 1820 until February, A. D. 1845; I do not know that I ever saw any such deed as is inquired for by the above interrogatory; I do not think any such deed was on record in said office during the time I was recorder of said county.

Interrogatory 11. Look at a paper now shown you, marked "M" and signed by you with your name, and purporting to be a copy of a deed from Christopher Wyant, as sheriff of Knox county, to Jenkin Phillips, for said lot 12 of said grant, and say whether said paper is or not a true copy from the record-book of deeds of said county of Clark in said recorder's office; who recorded said deed in said record-book, and was it or not correctly recorded from the original deed of said Wyant; to whom, if any person, was said original deed delivered after being recorded, and what has become of it?

Answer. I have compared said copy, signed by me, and now shown me, and marked M, for said lot No. 12 of said grant, with the record of deeds as contained in book W, pages 259 and 260, of said recorder's office, and find it is a true and complete copy of said record, taken from said pages. I recorded said original deed

in said record-book, and believe it was correctly recorded in all respects; I do not know what has become of said original deed; I believe I delivered it after it was recorded to Charles Dewey, esq., of Charleston aforesaid, but of this I have no distinct recollection, but believe it from a memorandum in my handwriting on the margin of said record-book, "that it was so delivered." And further he says not.

(Signed) JOHN DONTHILL.

And then proved by Charles Dewey, that he had no recollection of receiving said deed from said Donthill, and that he had searched for it among his papers without finding it, and did not recollect that he had ever seen it.

The plaintiffs then proved by the present recorder of Clark county, that at the request of Samuel and Richard Phillips, two of plaintiff's lessors, he had searched in his office for said deed from Sheriff Wyant to Jenkin Phillips, and did not find it. Said search was not very thorough, as he gave some of the bundles of deeds to said Samuel Phillips, to examine for himself. He also stated that when his predecessor, said Donthill, went out of said office in 1845, he took away with him some deeds which had been recorded there.

The plaintiff then read to the court the following affidavit and parts of depositions, which are in these words, to wit:

Richard Phillips, who is the son of Thomas Phillips, late of Jefferson county, in the State of Kentucky, dec'd, and the grandson of Jenkin Phillips, late of the same county, dec'd, and who is one of the lessors of the plaintiff in the above named suit, makes oath and says, that he was one of the executors of the last will of his father, said Thomas Phillips, dec'd, and he has repeatedly searched among all the papers of his father's estate, which ever came to his possession or control, for a deed purporting to have been made by Christopher Wyant, as sheriff of the county of Knox, in the then Territory of Indiana, to said Jenkin Phillips, for said lot twelve, of the Illinois grant, and has never been able to find any such deed, and he does not know that he ever saw any such deed, and he does not know where said deed is or what has become of it. Affiant, Samuel Phillips, and James Rudd were the sole executors of said Thomas Phillips, dec'd.

And further affiant says not.

RICH'D PHILLIPS.

STATE OF KENTUCKY,
County of Jefferson.

On this 24th day of March, in the year eighteen hundred and forty-nine, before me, the subscriber, appointed by the governor of the State of Indiana a commissioner for said State of Indiana, in

this State of Kentucky, to take acknowledgments and proof of deeds and other writings under seal, to be used or recorded in said State, and to administer oaths and affirmations, appeared Richard Phillips, well known to me, who in my presence signed the within affidavit, and who, upon being duly sworn, *he* declared the contents of the within affidavit are true, to the best of his knowledge and belief.

Witness my hand and seal.

MICHAEL MURPHY, [SEAL.]
Commissioner for Ind.

Affidavit of Samuel Phillips.

Samuel Phillips, of the county of Jefferson and State of Kentucky, makes oath, and says he is one of the lessors of the plaintiff in the above named suit; that he, his brother Richard Phillips, and James Rudd, were the executors of the last will of his father, Thomas Phillips, late of said county, and that said Thomas and his brother Richard were appointed the executors of Jenkin Phillips the elder, and their father, late of said county, but that said Richard (sen'r) never acted as such executor, and said Thomas was the sole acting executor of said Jenkin; and affiant is informed and believes all the papers belonging to said Jenkin went into the hands of said Thomas, as his executor, and that all the papers of said Thomas and of said Jenkin afterwards came to the hands of affiant, and most of them he has now.

Affiant has repeatedly and carefully searched among all of said papers, and everywhere else where he thought it might likely be found, for a deed made by Christopher Wyant, as sheriff of Knox county, in the then Indiana Territory, to said Jenkin Phillips, of lot 12 of the Illinois grant, and for a deed made by the commissioners of said grant to Michael Lacassagne of the same land, and affiant has been unable to find either of said deeds, and does not know where the same or either of them are, or are likely to be found, or what has become of them, or either of them, and he does not believe he ever had or saw either of them.

And further affiant says not.

SAMUEL PHILLIPS.

STATE OF KENTUCKY,
Jefferson County, sct.

The foregoing statement was this day subscribed and sworn to by Samuel Phillips, whose name is attached thereto, this 2d March, 1849, before the undersigned, a justice of the peace in and for said county and State.

G. W. CHAMBERS, *J. P. J. C.*

STATE OF KENTUCKY,
Jefferson County, sct.

I, Curran Pope, clerk of the county court of the county aforesaid, do certify that G. W. Chambers, who has signed the foregoing certificate, is, and was at the date thereof, an acting justice of the peace in and for said county, duly commissioned and sworn, and that full faith and credit are due to his official acts.

In testimony whereof I have hereto set my hand and affixed my seal of office, this sixth day of March, 1849.

[SEAL.]

CURRAN POPE.

I, Samuel Churchill, presiding judge of the county court of Jefferson county, in the State of Kentucky, do hereby certify that Curran Pope, who has signed the above and foregoing certificate, is, and was at the time of signing the same, clerk of said court, and also keeper of the seal of said county, and his attestation is in due form of law, and entitled to full faith and credit.

In witness whereof I have hereunto set my hand, this 14th day of May, 1849.

SAMUEL CHURCHILL.

Affidavit of James Rudd.

STATE OF KENTUCKY,
Jefferson County.

James Rudd makes oath and says: He was one of the executors of the last will of Thomas Phillips, late of said county, who was the son of Jenkin Phillips, the elder, also late of said county; and affiant is one of the lessors of the plaintiff in the suit of John Doe ex dem. Samuel Phillips and others against George V. *Howkec*, in the circuit court of the United States for the district of Indiana, in ejectment.

Affiant has in his possession some of the papers belonging to the estate of said Thomas Phillips, dec'd, and he has, at the request of R. Crawford, esq., attorney for the plaintiff in said suit, carefully examined among the papers of said estate in his possession, and the other papers he has, to find a deed made by Christopher Wyant, a sheriff of Knox county, in the then Territory of Indiana, to Jenkin Phillips aforesaid, of lot 12 of the Illinois grant, and affiant was not able to find any such deed, and he does not believe he ever had it or saw it, and he does not know where it is, or is likely to be, or what has become of it.

Affiant has made such examination this day, and he has also repeatedly looked over his papers before, and is very certain he has not said deed in his possession, and never had it.

And further says not.

JAMES RUDD.

STATE OF KENTUCKY,
Jefferson County.

Subscribed and sworn to before me, a justice of the peace in and for said county and State, this 2d March, 1849.

G. W. CHAMBERS, *J. P. J. C.*

The plaintiff then proved that said Christopher Wyant died as early as 1815.

The plaintiff then produced the record-book from the recorder's office of said Clark county, in which said deed had been recorded by said Donthitt on the 29th of February, 1826, and offered to read as evidence the copy therein of said deed, and the acknowledgment thereof, which are in the words and figures following, to wit:

(Document marked "M," referred to by Donthitt.)

This indenture, made this ninth day of July, in the year of our Lord one thousand seven hundred and ninety-nine, between Christopher Wyant, esq., sheriff of the county of Knox, in the territory northwest of the Ohio, of the one part, and Jenkin Phillips, of Jefferson county, State of Kentucky, of the other part, witnesseth: that whereas Henry Hurst, heretofore, at our court of common pleas, holden for the county of Knox, at Vincennes, by the judgment of the said court, at the November term, 1798, did recover against Robert K. Moore and Steven (Stephen) Ormsby, executors of Michael Lacassagne, deceased, the sum of two thousand nine hundred and nine dollars and eighty cents:

Whereupon a writ of inquiry, in effect an elegit, did issue agreeable to the laws of the Territory aforesaid for the said Henry Hurst, James Wilkinson, John Holker and Kearney Wharton, and whereby said finding of the jury in that case impanelled, it did appear that the yearly rents and profits of the several tracts of land, amounting to three thousand acres, which had been so taken in execution as the property of said Michael Lacassagne, deceased, would not be sufficient by the space of seven years to pay the said debts, interest, and costs of suits:

Whereupon the several writs of execution, called levari facias, was levied upon the several tracts of land belonging to the said Michael Lacassagne, deceased, situate, lying, and being in the county aforesaid, in the Illinois grant, known by number twelve, containing five hundred acres, being exposed to sale, as the law directs, Jenkin Phillips became purchaser, beginning at three beeches and north corner of John Rogers' survey number eleven, running thence with Rogers' line south forty degrees east three hundred and sixty poles, crossing a pond to a black walnut and small mulberry, north fifty degrees east two hundred and twenty-two poles to two beeches and a sweet gum, north forty degrees

west three hundred and sixty poles, crossing a run twice to two small poplars and a cherry tree; thence south fifty degrees west two hundred and twenty-two poles to the beginning, containing five hundred acres; which said land was regularly advertised and exposed to sale in and towards satisfaction of the debt aforesaid, and upon the sale of, the said Jenkin Phillips did become the purchaser as aforesaid of the said lot No. 12, and bounded as aforesaid, for and in consideration of the sum of four hundred and fifteen dollars:

Now, this indenture witnesseth, that the said Christopher Wyant, esq., sheriff of the said county aforesaid, by virtue of the laws in such case made and provided, for and in consideration of the sum of four hundred and fifteen dollars aforesaid to him, the said sheriff, in hand paid, in and towards satisfaction of the debts and costs aforesaid, the receipt whereof he doth hereby acknowledge, hath granted, bargained, sold, aliened, and conveyed, and by these presents doth grant, bargain, sell, alien, and convey unto the said Jenkin Phillips, all that tract or parcel of land lying and being in the county aforesaid, so mentioned as aforesaid, containing the quantity of five hundred acres, being the number 12 as above mentioned in the Illinois grant, together with all and singular its appurtenances, to have and to hold the said (500) five hundred acres of land so described, called and known, as before mentioned, by number 12, so described, with all and singular the rights, members, and appurtenances, unto the said Jenkin Phillips and his heirs and assigns, to the only use, benefit, and behoof of the said Jenkin Phillips, and his heirs and assigns, forever.

Said Christopher Wyant, esq., hereby, as sheriff, acting under the laws aforesaid, transferring and conveying and vesting in the said Jenkin Phillips, and his heirs and assigns forever, all the right, title, interest, claim, property and demand which the said Michael Lacassagne, deceased, or his heirs or representatives, or any one or more of them, had, might or could have, in and to the said tract of land described as aforesaid, or any part thereof, to all intents and purposes whatsoever, whether the same be herein or hereby expressed or not.

In testimony whereof, the said Christopher Wyant, as sheriff of the county aforesaid, in virtue of and agreeable to the laws aforesaid, and in execution of his said office, hath hereunto set his hand and affixed his seal the day and year first before written.

CHRISTOPHER WYANT,
Sheriff K. C.

Signed and sealed in presence of—
ROBERT K. MOORE,
WILLIAM SULLIVAN,
R. HAMILTON,
ROB. FLOYD.

TERRITORY OF THE UNITED STATES
Northwest of the river Ohio, Knox County, sct.

Be it remembered, at a court of common pleas, holden this sixth day of August, 1799, at the court-house, held for the county of Knox, personally appeared here in open court Christopher Wyant, esq., sheriff of our said county, and acknowledged the above indenture to be his act and deed for the purpose therein mentioned.

In witness whereof I, the presiding justice of our said court, have hereunto set my hand and ordered the seal of said court hereunto affixed. [SEAL.]

PIERRE GAMELIN.

STATE OF INDIANA,
Clark County, sct.

I, Joseph Bower, recorder in and for the county and State aforesaid, do hereby certify that the above and foregoing is a full, true and complete copy of the original deed as it now remains of record in my office, in deed book W, vol. 1st, No. 24, on pages 259 and 260.

Given under my hand and private seal, (having no seal of office,) at Charleston, this 12th day of February, A. D. 1848. [SEAL.]

JOSEPH BOWER, *R. C. C.*

To which the defendants objected, because—

1st. Said deed was not recorded until the year 1826, and it purported to have been executed in 1799, and it was not duly admitted to registration by reason of a non-compliance with the act in force when it was recorded.

2d. There was no sufficient proof of the existence and loss of the original deed, and no proof whatever of the execution of said original deed.

3d. The writ of levari facias therein referred to did not authorize the sheriff to sell said land.

4th. There was no proof that said original deed was acknowledged in open court, and that the plaintiff had not offered, and did not propose to offer, any proof that the acknowledgment of said deed was noted or registered upon the minutes or records of said court of common pleas of Knox county.

5th. That said Pierre Gamelin had no authority to take the acknowledgment of a sheriff's deed, and that his certificate was not evidence of a matter of record.

And the court was of the opinion that sufficient preliminary proof had been made to authorize the introduction of secondary evidence of said deed from said sheriff, Wyant, to said Jenkin Phillips.

But the court was also of opinion that said deed was not valid, so as to convey the legal title in said land to Jenkin Phillips, unless it was acknowledged by said Wyant in said court of common pleas, and that such an acknowledgment could be proved only

by the production of the record of said court of common pleas, or of a duly certified copy thereof, and because the plaintiff had introduced no such evidence of the acknowledgment of said deed, and for no other reason, the court refused to allow said copy of said deed and acknowledgment to be read in evidence to the jury.

And after the jury had rendered their verdict herein, and before any judgment therein, the plaintiff moved that said verdict be set aside, and a new trial granted, because the court had erred in refusing to allow said copy of said deed and acknowledgment to be read in evidence to the jury.

But the court overruled said motion, and refuses to grant a new trial. To which opinions and decisions of the court in neglecting said evidence, and in refusing to grant a new trial, the plaintiff excepted at the time of said rejection and refusal, and prays that this his bill of exceptions may be signed and sealed by the court, which is done this 30th of November, 1854.

E. M. HUNTINGTON. [SEAL.]

And the plaintiffs pray an appeal to the Supreme Court of the United States; which was granted, on filing bond for two hundred dollars; which bond was then and there filed, in these words, to wit:

JOHN DOE, Ex dem. RICH'D PHILLIPS, &c.,
vs.
GEORGE V. HOWK, &c. } In Error.

Know all men that I, Samuel H. Patterson, of the city of Jeffersonville, in the State of Indiana, am held and firmly bound unto said George V. Howk and the other defendants in the above entitled suit, in the sum of two hundred dollars, to be paid to said George V. Howk and said other defendants, their executors or administrators, respectively, and to such payment I bind myself, my heirs, executors and administrators, firmly with these presents. Sealed with my seal, and dated this 12th of December, 1855.

Whereas said John Doe, ex dem. Richard Phillips and others, has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the circuit court of the United States for the district of Indiana; therefore the condition of this obligation is such, that if the above named John Doe, ex dem. Richard Phillips and others, shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, this obligation shall be void; otherwise the same shall remain in full force.

S. H. PATTERSON, [L. S.]

Sealed and delivered in presence of—
R. CRAWFORD.

I approve the above bond and security.

E. M. HUNTINGTON,
United States Judge for Indiana.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Circuit Court of the United States for the seventh circuit and district of Indiana, greeting:

Because in the record and proceedings, as also in the rendition of judgment in a plea, which is in said circuit court before you, between John Doe, on the demise of Samuel Phillips, William Phillips, Richard Phillips, (son of Thomas Phillips,) Richard Phillips, (son of Samuel Phillips,) Presley Phillips, Shapley Phillips, Susan Gray, Elizabeth Tucker, Catharine Hert, and William Hert, her husband, Mary Ann Shirly, and Cyrus Shirly, her husband, Nancy E. Hert, and Beneger Hert, her husband, Jenkin P. Robinson, Nancy Hunter, David Hunter, her husband, Abraham Hunter, James Hunter, Joseph Hunter, Maria Hunter, Elizabeth Hunter, David Hunter, (the son of Joseph Hunter, dec'd,) Milford Hunter, Thomas Hunter, Hannah Stalcup, Mark H. Stalcup, her husband, Mary Gibbory, Andrew Gibbory, her husband, Sarah Ann Phillips, Mary Eliza Phillips, Thomas Phillips, Samuel Phillips, Mary Ann Swingler, James Swingler, Maria Stewart, Weden Stewart, her husband, Elizabeth Phillips, Thomas Phillips, Thomas J. Phillips, Mary Phillips, Richard Phillips, Henry Phillips, Murray Phillips, Anne Rudd, James Rudd, her husband, Hannah Dubberly, Lydia Clark, Ludlow Clark, her husband, Nancy Hamilton, Darius Hamilton, her husband, George Riley, Camden Riley, William Riley, Martha Hathaway, John Hathaway, her husband, Lydia Phillips, Richard Phillips, her husband, Louisiana Riley, Amos Riley, her husband, and George V. Howk, Margaret S. Howk, John M. Espy, George Espy, Sarah Espy, Sarah J. Espy, John Gilmore, and Elonz. Howk, as by their complaint appears, a manifest error hath happened, to the great damage of the said plaintiff; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, if judgment be therein given, you are hereby commanded that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court aforesaid, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 19th day of Octo-

ber, in the year of our Lord one thousand eight hundred and fifty-eight, and of the independence of the United States the eighty-third.

Signed and sealed with the seal of said circuit court the day above written.

HORACE BASSETT, [L. S.]
Clerk of the Circuit Court of the United States for the district of Indiana.

UNITED STATES OF AMERICA,
Indiana, ss.

To George V. Howk, Margaret S. Howk, John M. Esby, George Esby, Sarah Esby, Sarah J. Esby, John Gilmore, Elonz. Hunt:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December, 1858, pursant to a writ of error filed in the clerk's office of the United States circuit court for the district of Indiana, wherein John Doe, ex dem. Samuel Phillips, Wm. Phillips, Richard Phillips, a son of Samuel P. Phillips, Presly Phillips, Shaply Phillips, Susan Grey, Elizabeth Tucker, Catharine Hunt, and William Hunt, her husband, in right of his wife, Mary Ann Shirly, and Cyrus Shirly, her husband, in right of his wife, Nancy E. Hunt, and Benager Hunt, her husband, in right of his wife, Jenkin P. Roberson, Nancy Hunter, and David Hunter, her husband, Abraham Hunter, James Hunter, Joseph Hunter, Marie Hunter, Elizabeth Hunter, David Hunter, son of Joseph Hunter, deceased, Mitford Hunter, Thomas Hunter, Hannah Stolcop, Mark S. Stolcop, her husband, Mary Gibberly, and Andrew Gibberly, her husband, Sarah Ann Phillips, Samuel Phillips, Mary E. Phillips, Thomas Phillips, Mary Ann Swindler, and James Swindler, her husband, Maria Stewart, and Weeden Stewart, her husband, Elizabeth Phillips, Thomas Phillips, Thomas J. Phillips, Mary Phillips, Richard Phillips, Henry Phillips, Murray Phillips, Ann Rudd, and James Rudd, her husband, Hannah Donberly, Lydia Clark, and Ludlow Clark, her husband, Nancy Hamilton, and Darius Hamilton, her husband, George Rily, Camden Rily, William Rily, Martha Hathaway, and John Hathaway, her husband, Lydia Phillips, and Richard Phillips, her husband, Louisiana Rily, and Amos Rily, in his own right, and in right of his wife, are plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done *to be done* to the parties in this behalf.

E. M. HUNTINGTON,
U. S. Dist. Judge.

Served the foregoing citation upon George V. Howk, Margaret S. Howk, and John Gilmore, by personally reading *a* delivering to each a copy hereof on the 15th day of October, A. D. 1858, and same day served upon Sarah J. Espy, by leaving a copy hereof in the hands of her husband, Curtis McClintock, at her residence in Clark county; and return not found as to John M. Esby, Sarah Esby, George Esby, and Elonz. Hunt.

JOHN L. ROBINSON,
Marshal.
By CHARLES H. ADAMS,
Deputy.

Service on four	8 00
4 copies	4 00
R. R. fare	6 50
Hotel	2 50
Omnibus	1 00
Ferry	50
2 days	4 00
Return	10
	$26 60

UNITED STATES OF AMERICA,
Indiana District, ss.

I, Horace Bassett, clerk of the United States circuit court for the seventh circuit and district of Indiana, do hereby certify the above and foregoing to be a true and complete transcript from the record now in my office in the above entitled case, together with the writ of error and citation hereto attached, and also the costs of this appeal, taxed and allowed by the court at forty-two dollars and sixty cents.

Witness my hand, and the seal of said circuit court hereto attached, at Indianapolis, this twentieth day of October, in the year of our Lord eighteen hundred and fifty-eight.

[SEAL.]

HORACE BASSETT,
Clerk.

Filed 10th November, 1858.

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SUPREME COURT OF THE UNITED STATES.

No. 131.

ANGELINA R. EBERLY AND PEYTON LYTLE, PL'FFS IN ERROR,

vs.

LEWIS MOORE AND CHARLES RAYBON.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE WESTERN DISTRICT OF TEXAS.

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THE UNITED STATES OF AMERICA.

District Court of the United States, western district of Texas, Austin.

At a term of the district court of the United States in and for the western district of Texas, begun and held at the city of Austin, on the first Monday of January, in the year of our Lord one thousand eight hundred and fifty-eight—present the Hon. Thomas H. Duval, judge of said court, William C. Young, esq., marshal, Matthew Hopkins, clerk—among other were the following proceedings, to wit:

Title of Cause.

ANGELINA R. EBERLY and PEYTON LYTTLE, by his next friend, the said A. B. Eberly, Plaintiffs, vs. GEORGE MOORE, GEORGE W. MORGAN and Mary, A. Morgan, his wife, Charles Raybon, James McDonald, sr., James McDonald, jr., John R. McDonald, Valentine Reiss, A. G. Perry, and Louis Moore, Defendants.	Willis L. Long, Zachariah Hammond, John J. Long, ——— Varnon, and ——— Evans, defendants, added by amended petition.

Be it remembered, that heretofore, to wit, on the 4th day of November, 1855, came the plaintiffs, by Allen & Hale, their attorneys, and filed their petition in words to wit:

Petition.

ANGELINA B. EBERLY et al. vs. GEORGE MOORE et als. } L. 131.

U. S. D. C., Austin.

Filed November 4th, 1855.

W. P. DE NORMANDIE, *Clerk.*

To the Hon. John C. Watrous, Judge of the District Court of the United States for the district of Texas, having the jurisdiction and exercising the powers of a circuit court of the United States of America:

Angelina B. Eberly and Peyton Lytle, both of Lexington, and citizens of the State of Kentucky, the said Peyton being an infant,

under the age of twenty-one years, to wit, of the age of four years, sues and prays leave to prosecute herein by the said Angelina B. Eberly, his next friend, by this their petition complain against George Moore, George W. Morgan and Mary A. Morgan, his wife, Charles Raybon, James McDonald, sen'r, James McDonald, jr., John R. McDonald, Valentine Reiss, and A. G. Perry, all of the county of Falls, and Lewis Moore, of the county of McLennan, defendants hereto, each and every one of whom is a citizen of the State of Texas.

For that the said defendants heretofore, to wit, on the first day of January, A. D. 1854, with force and arms, broke and entered the close of your petitioners, situate in the county of Falls aforesaid, containing seven square leagues of land, and described and bounded as follows, that is to say: commencing at a stake on the left bank of the river Brazos, at the upper corner of a tract of land, containing four leagues, surveyed for one José Antonio Manchacha by Francis W. Johnson, surveyor, in the year 1833, and running thence north 62° east 21,299 varas, to a stake in the prairie for a corner; thence N. 28° W. 8,750 varas, to another stake in the prairie; thence south 62° west, 21,179 varas, to a stake on the bank of said river; thence, following the bank of said river with its meanders to the point of beginning; said tract fronting on said river and having its southern or lower line correspond with the said four leagues surveyed for said Manchacha on the northern boundary thereof. The above-described premises being part of eleven leagues of land conceded to Gregorio Basquez by the supreme government of the State of Coahuila and Texas, on the 11th day of March, A. D. 1830, in conformity with the 24th article of the colonization law of said State of the 24th of March, A. D. 1825, in sale, and whereof your petitioner, on the first day of January, 1854, aforesaid, were possessed in their demesne as of fee and right; and being so entered, the defendants then and there, with force as aforesaid, cut down and carried away the trees and timber then and there growing and found, to wit: one hundred cedar trees, of the value of five hundred dollars, and one hundred other trees, of the further value of five hundred dollars, and with force as aforesaid then and there disseized your petitioners of their said close, and still hold them out, and other wrongs then and there did, against the peace and to the damage of your petitioners one thousand dollars.

Wherefore, your petitioners pray that the said defendants may be severally cited to appear at the district court aforesaid next to be held at the city of Austin, to answer this petition, and that your petitioners recover against them the possession of their said close, together with the damages aforesaid, amounting to one thousand dollars, and for general relief.

By ALLEN & HALE,
Their Att'ys.

Take notice this suit is brought as well to try title as for damages.

ALLEN & HALE.

Amended Petition.

And afterwards, to wit, on the 14th day of July, 1856, the plaintiffs filed their amended petition, in words to wit:

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al. } L. 131.

Amended petition filed July 14th, 1856.

W. P. DE NORMANDIE,
Clerk A. & H.

U. S. D. C., Austin.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et als. } No. 131.

And now, before issuance of citation in the above entitled cause, the plaintiffs amend their petition therein by impleading the following named persons, and inserting their names as parties defendant in said petition, with like effect as if they had been originally so named therein, viz: Willis L. Long, Zecheriah Hammond, John J. Long, Varnon, and Evans, (whose christian names being at present unknown to your petitioners, they pray leave to insert them when discovered,) and Charles V. Fortune, each and all of whom are a citizen and citizens of the State of Texas aforesaid.

And pray as by their original petition have prayed your petitioners.

By ALLEN & HALE,
their Att'ys.

And afterwards, to wit, on the 30th day of July, A. D. 1856, W. P. de Normandie then being clerk, as appears by the filings, there issued from the clerk's office the following citations:

Citation to George Moore.

Citation for George W. Moore, in words to wit:

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon George Moore, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and

for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan and Mary A. Morgan, his wife, Rabon, James McDonald, sen'r, James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title and for damages, of which you will serve the said defendant, George Moore, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day of [SEAL.] July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

The return upon which is in words, to wit:

Return.

Received on the 20th day of Sept., 1856, and not executed; the defendant, George Moore, cannot be found in this district.

BEN. McCULLOUGH, *U. S. M.*
By J. A. ECHOLS, *Deputy.*

The citation to G. W. Morgan is endorsed in words, to wit:

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al. } L. 131.

Citation for G. W. Morgan, issued July 30th, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

Citation to G. W. Morgan.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon G. W. Morgan, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife, ——— Rabon, James McDonald, sen., James McDonald, jr., John R. McDonald, ——— Rice, A. G. Perry, Lewis Moore, Willis L. Long, ——— Hammond, ——— Varnon, ———Evans, and Robert Fortune, in an

action of trespass to try title and for damages; of which you will serve the said defendant, G. W. Morgan, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE, *Clerk.*

Which citation is endorsed in words, to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 23d day of October, 1856, in Falls county, 95 miles from Austin, by handing to deft., G. W. Morgan, a true copy of this writ and a certified copy of the petition, as furnished by the clerk of the court.

BEN. McCULLOCH, *U. S. M.*
By J. A. ECHOLS, *Deputy.*

Serving writ.....	2 00
30 miles' travel, 6 cts...	1 80
	$3 80

The citation to Mary A. Morgan is endorsed in words, to wit:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als.
} L. 131.

Citation for Mary A. Morgan, issued July 30th, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words as follows:

Citation to Mary A. Morgan.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Mary A. Morgan, if she be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife, ——— Rabon, James McDonald, sen., James McDonald, jr., John R. McDonald, ——— Rice, A. G. Perry, Lewis Moore, Willis L. Long, ——— Hammond, ——— Varnon, ——— Evans, and Robert Fortune, in

an action of trespass to try title and for damages; of which you will serve the said defendant, Mary A. Morgan, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day of July, [SEAL.] A. D. eighteen hundred and fifty-six, and eighty-first year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said citation is the marshal's return, in words to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 23d day of October, 1856, in Falls county, 95 miles from Austin, by handing to deft., Mary A. Morgan, a true copy of this writ, and a certified copy of the petition, as furnished by the clerk of the court.

Serving writ.....	2 00
30 miles' travel, 6 cts...	1 80
	$3 80

The citation to ——— Rabon is endorsed in words, to wit:

ANGELINA B. EBERLY et als. vs. GEORGE MOORE et *et* als. } L. 131.

Citation for ——— Rabon, issued July 30th, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words as follows:

Citation to ——— Rabon.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon ——— Rabon, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife; ——— Rabon, James McDonald, sen., James McDonald, jr., John R. McDonald, ——— Rice, A. G. Perry, Lewis Moore, Willis L. Long, ——— Hammond, ——— Varnon, ——— Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you will serve the said defendant, ——— Rabon, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day of July,
[SEAL.] A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

The marshal's return of which citation is in words, to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 23d day of October, 1856, in the county of Falls, 80 miles from Austin, by handing to deft., Rabon, a true copy of this writ, and a certified copy of the petition, as furnished by the clerk of the court.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Dep'ty.*

Serving writ.....	2 00
29 miles' travel.....	1 74
	$3 74

The citation to James McDonald, sen., is endorsed in words, to wit:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als. } L. 131.

Citation for James McDonald, sr., issued July 30th, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words as follows:

Citation to Jas. McDonald, Sr.

United States of America, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon James McDonald, sen., if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan and Mary A. Morgan, his wife, ——— Rabon, James McDonald, sen., James McDonald, jr., John R. McDonald, ——— Rice, A. G. Perry, Lewis Moore, Willis L. Long, ——— Hammond, ——— Varnon, ——— Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you will serve the said defendant, James McDonald, sen., with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of the said court, and seal of court, at the city of Austin, this 30th day of July, [SEAL.] eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal in the words and figures following, to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 23d day of October, 1856, in the county of Falls, 90 miles from Austin, by handing def't, James McDonald, a true copy of this writ, and a certified copy of the petition as furnished me by the clerk of the court.

BEN. McCULLOCH, *U. S. M.*
By J. A. ECHOLS, *Dp'ty.*

Serving writ.....	2 00
25 miles' travel, 6 cts.....	1 50
	$3 50

The citation to James McDonald, jr., is endorsed, to wit:

ANGELINA B. EBERLY et als. vs. GEORGE MOORE et als. } L. 131.

Citation for James McDonald, jr., issued July 30th, 1856.

And is in words as follows:

Citation to Jas. McDonald, junior.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon James McDonald, jr., if he be found in *in* your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife, Rabon, James McDonald, sr., James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you will serve the said defendant, James McDonald, jr., with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day [L. S.] of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal in the words and figures following, to wit:

Return.

Received September 20th, 1856, and executed on the 23d day of October, 1856, in the county of Falls, (90) miles from Austin, by handing to def't, Jas. McDonald, jr., a true copy of this writ and a certified copy of the petition as furnished by the clerk of the court.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Dep'ty.*

Serving writ.....	2 00
90 miles' travel, 6 cts.....	1 80
	$3 80

The citation to John R. McDonald is endorsed in words, to wit:

ANGELINA B. EBERLY et als.
vs. } L. 131.
GEORGE MOORE et als.

Citation for John R. McDonald, issued July 31st, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is words as follows:

Citation of John R. McDonald.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon John R. McDonald, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife, Rabon, James McDonald, sr., James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long,

Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you will serve the said defendant, John R. McDonald, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of the said court, and seal of court, at city of Austin, this 31st day of [L. S.] July, A. D. eighteen hund. and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed in said writ is the return of the marshal in the words and figures following, to wit:

Return.

I, J. R. McDonald, one of the defendants herein named, do hereby acknowledge service on the within writ, and waive all further process.

Marlin, Nov. 5th, 1856.

JAMES R. McDONALD.

In presence of—

S. D. BARCLAY, *C. C. F. C.*

100 miles' travel.....$6 00

The citation to Rice is endorsed as follows:

ANGELINA B. EBERLY et als. vs. GEORGE MOORE et als. } L. 131.

Citation for Rice, issued July 31st, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

Citation to Rice.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Rice, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife, Rabon, James McDonald, sen'r, James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you

will serve the said defendant, Rice, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 31st day of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

[L. S.]

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal in the words and figures, following to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 23d day of October, 1856, in the county of Falls, 90 miles from Austin, by handing to def't, Rice, a true copy of this writ, and a certified copy of the petition as furnished by the clerk of the court.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Deputy.*

Serving writ.....	$2 00
95 miles' travel, 6 cts...	2 10
	$4 10

The citation to Rice is endorsed in words as follows:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als.
} L. 131.

Citation for A. G. Perry, issued July 31st, 1856.

W. P. DE NORMANDIE, *Clerk.*

And filed May 27th, 1857.

M. HOPKINS, *Clerk.*

And is in words, to wit:

Citation for A. G. Perry.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon A. G. Perry, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle, against George Moore, G. W. Morgan and Mary A. Morgan, his wife, Rabon, James McDonald, sen'r, James McDonald, jr., John R. McDonald,

Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title, and for damages; of which you will serve the said defendant, A. G. Perry, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 31st day [L. S.] of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal in the words and figures following, to wit:

Return.

Received on *the* October 20th, 1856, and executed on the 24 day of November, 1856, 100 miles from Austin, by handing to defendant, A. G. Perry, a true copy of this writ and a certified copy of the petition as furnished by the clerk of the court Nov. 24th, 1856.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Dep'ty.*

Serving writ.....	2 00
100 miles' travel.....	6 00
	$8 00

The citation to Lewis Moore is endorsed in words, to wit:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als. } L. 131.

Citation for Lewis Moore; issued July 31st, 1856.
W. P. DE NORMANDIE, *Clerk.*

And is in words as follows:

Citation to Lewis Moore.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Lewis Moore, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan and Mary A. Morgan his wife, Rabon, James

McDonald, sen'r, and James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you will serve the said defendant, Lewis Moore, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 31st day of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal in the words and figures following, to wit:

Return.

Received on the 20th day of August, 1856, and executed on the 27th day of September, 1856, in McLennan county, 125 miles from Austin, by handing the defendant, Lewis Moore, a true copy of this writ and a certified copy of the petition as furnished by the clerk of the court.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Dep'ty.*

Serving writ.....	2 00
125 miles' travel, 6 cts...	7 50
	$9 50

The citation to Willis L. Long is endorsed in words and figures as follows:

ANGELINA B. EBERLY et als. vs. GEORGE MOORE et als. } L. 131.

Citation for Willis L. Long. Issued July 30th, 1856.
W. P. DE NORMANDIE, *Clerk.*

And is in words as follows:

Citation to Willis L. Long.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Willis L. Long, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in

and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan his wife, Rabon, James McDonald, sen'r, James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you will serve the said defendant, Willis L. Long, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

[SEAL.]

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal in the words and figures following, to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 22d Oct., 1856, in the county of Falls, 90 miles from Austin, by handing to def't, Willis L. Long, a true copy of this writ and a certified copy of the petition as furnished by the clerk of the court.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Dep'ty.*

Serving writ.....	2 00
Travel 20 miles.....	1 20
	$3 20

Tha citation to Hammond is endorsed as follows:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als. } L. 131.

Citation for Hammond. Issued July 30th, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

Citation to Hammond.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Hammond, if he be

found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan his wife, Rabon, James McDonald, sen'r, James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title and for damages; of which you will serve the said defendant, Hammond, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day [L. S.] of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And on said writ is endorsed the return of the marshal, in the words and figures following, to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 23d day of October, 1856, in the county of Falls, 90 miles from Austin, by handing deft., Hammond, a true copy of this writ, and a certified copy of the petition as furnished by the clerk of the court.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Deputy.*

Serving writ.....	$2 00
25 miles' travel.....	1 50
	$3 50

The citation to Varnon is endorsed as follows:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als.

Citation for Varnon; issued July 30th, 1856.
W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

Citation to Varnon.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Varnon, if he be found within your district, to be and appear before the honorable

the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife, Rabon, James McDonald, senr., James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title, and for damages; of which you will serve the said defendant, Varnon, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at Austin, this 30th day of July,
[L. S.] A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal, in words and figures, to wit:

Return.

Received on the 20th day of Sept., 1856, and not executed; the defendant, Vernon, cannot be found in my district.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Deputy.*

The citation to Evans is endorsed in words, to wit:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als.
} L. 131.

Citation for Evans; issued July 30th, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words as follows:

Citation to Evans.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Evans, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of Nov. next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan and Mary A. Morgan, his wife, Rabon, James McDonald, senr., James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of

trespass to try title and for damages, of which you will serve the said defendant, Evans, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at Austin, this 30th day of July,
[L. S.] A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal, in the words and figures following, to wit:

Return.

Received on the 20th day of Sept., 1856, and not served, the defendant, Evans, having gone to Mississippi.

BEN. McCULLOCH, *U. S. M.*
By J. A. ECHOLS, *Deputy.*

The citation to Robert Fortune is endorsed as follows, to wit:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als. } L. 131.

Citation to Robert Fortune; issued July 30th, 1856.

W. P. DE NORMANDIE, *Clerk.*

And is in words, to wit:

Citation to Robert Fortune.

United States District Court, district of Texas.

The President of the United States to the Marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to summon Robert Fortune, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Austin, on the third Monday of November next, to answer to the petition and complaint of Angelina B. Eberly and Peyton Lytle against George Moore, G. W. Morgan, and Mary A. Morgan, his wife, James McDonald, senr., James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Hammond, Varnon, Evans, and Robert Fortune, in an action of trespass to try title, and for damages; of which you will serve the said defendant, Robert Fortune, with the accompanying copy of said petition.

Witness the Hon. John C. Watrous, judge of said court, and seal of court, at the city of Austin, this 30th day
[L. S.] of July, A. D. eighteen hundred and fifty-six, and 81st year of the independence of the United States of America.

W. P. DE NORMANDIE, *Clerk.*

And endorsed on said writ is the return of the marshal, in the words and figures following, to wit:

Return.

Received on the 20th day of September, 1856, and executed on the 23d day of October, 1856, in Falls county, 80 miles from Austin, by handing deft., Fortune, a true copy of this writ, and a certified copy of the petition as furnished by the clerk of the court.

BEN. McCULLOCK, *U. S. M.*
By J. A. ECHOLS, *Dep'ty.*

Serving writ.....	2 00
30 miles' travel.....	1 80
	$3 80

And afterwards, to wit, Nov. 22d, 1856, came Charles V. Fortune, one of the defendants herein, by attorney, and filed his answer herein in words, to wit:

ANGELINA B. EBERLY et als.
vs.
CHARLES V. FORTUNE et als. } Plea 131.—Plea.

United States Circuit Court.

Filed Nov. 22d, 1856.

W. P. DE NORMANDIE, *Clerk.*

Answer of Charles V. Fortune.

In the District Court of the United States for the district of Texas, having the jurisdiction and excercising the powers of a circuit court of the United States of America.

To Austin Term, A. D. 1856.

ANGELINA B. EBERLY et al.
vs.
CHARLES V. FORTUNE et als. } No.

Now at this term of the court comes Charles V. Fortune, one of the defendants to the above entitled cause, by his attorney, and by way of plea and answer to plaintiff's petition says, that the said plaintiffs, Angeline B. Eberly and Peyton Lytle, an infant at law, who sues by his next friend, the said Angeline B. Eberly, now at the time of the institution of this suit—that is to say, on the fourth day of November, A. D. 1855, and before that time—actual and bona fide citizens of the State of Texas, and not of the State of Kentucky as alleged by them in their petition; by reason whereof, the said plaintiffs had no right to bring their action in this

court, and that this court has no jurisdiction of the same, which defendant is ready to verify, &c.

CHAS. STEWART,
Att'y for Def't.

And on the same day, Nov. 22d, 1856, comes John J. Long, one of the defendants herein, and by attorney files his answer in words, to wit:

ANGELINA B. EBERLY et al.
vs.
JOHN J. LONG et als.

In U. S. Circuit Court.

Filed Nov. 22d, 1856.

W. P. DE NORMANDIE, *Clerk.*

Answer of John J. Long.

In the District Court of the United States for the district of Texas, having the jurisdiction and exercising the powers of a circuit court of the United States of America.

Austin Term, A. D. 1856.

ANGELINE B. EBERLY et al.
vs.
JOHN J. LONG et als.
No. 131.

Now comes John J. Long, one of the defendants to the above entitled cause, by his attorney, and for answers to plaintiff's petition, says, that the said plaintiffs, Angeline B. Eberly and Peyton Lytle, an infant at law, who sued by his next friend, the said Angelina B. Eberly, was, at the time of the institution of this suit—that is to say, on the fourth day of November, A. D. 1855, and long before that time—citizens of the State of Texas, and not citizens of the State of Kentucky, as alleged by the said plaintiffs in their petition; wherefore this court has no jurisdiction to entertain this writ any longer, and this defendant is ready to verify, &c.

CHAS. STEWART,
Att'y for Def't.

And on the same day, Nov. 22d, 1856, come George W. and Mary A. Morgan, by their attorney, and filed their answer, in words as follows:

ANGELINA B. EBERLY et als.
vs.
GEORGE W. and M. A. MORGAN et als.

In U. S. Circuit Court.

Filed Nov. 22d, 1856.

W. P. DE NORMANDIE, *Clerk.*

Answer of George W. Morgan and Mary Ann Morgan.

In the District Court of the United States for the district of Texas, having the jurisdiction and exercising the powers of a circuit court of the United States of America.

To Austin Term, 1856.

ANGELINA B. EBERLY et als.
vs.
GEORGE W. and MARY A. MORGAN et als. } No.

Now, at this term of the court come George W. Morgan and Mary Ann Morgan, his wife, defendants to the above entitled cause, by their attorney, and by way of plea and answer to plaintiffs' petition, says, that the said plaintiffs, Angelina B. Eberly and Peyton Lytle, an infant at law, who sues by his next friend, the said Angelina B. Eberly, were at the time of the institution of this suit—that is to say, on the fourth day of November, 1855—and being before that time actual and bona fide citizens of the State of Texas, and not of the State of Kentucky, as alleged by them in their petition; by reason whereof this court cannot exercise jurisdiction of this cause, and this defendant is ready to verify, &c.

CHAS. STEWART,
Att'y for Def'ts.

And afterwards, on the 24th day of November, 1856, comes J. R. McDonald, one of the defendants, in person, and files his answer herein in words to wit:

ANGELINA B. EBERLY et als.
vs.
Ans. J. R. MCDONALD, GEORGE MOORE et als.

In U. S. District Court.

Filed Nov. 24th, 1856.

W. P. DE NORMANDIE, *Cl'k.*

Answer of J. R. McDonald.

In the District Court of the United States for the district of Texas, Austin Term, A. D. 1856.

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als.

Now at this term of the court comes J. R. McDonald, one of the def'ts in above entitled cause, and by way of answer says, that he denies all and singular *by* the trespasses and charges and allegations as set forth in plaintiffs' petition, and of this he puts himself upon the country.

J. R. McDONALD,
Per persone.

And on the same day, to wit, Nov. 24th, 1856, comes James McDonald, s'r, one of the defendants, and by attorney files his answer herein, in words as follows:

Disclaimer and Answer of Jas. McDonald, senior.

ANGELINA B. EBERLY et als.
vs.
Plea JAS. McDONALD, sr., GEORGE MOORE et als. } L. 130.

In U. S. District Court.

Filed Nov. 24th, 1856.

W. P. DE NORMANDIE, *Clerk.*

In the District Court of the United States for the district of Texas, Austin Term, A. D. 1856.

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et als. } No.

Now comes one of the defendants in the above entitled cause, James McDonald, s'r, and disclaims all right and title to any part or portion of the land set forth in plaintiffs' petition, and prays to be hence dismissed, with his reasonable costs.

J. R. McDONALD,
Att'y for Def't.

And afterwards, to wit, on the 25th day of November, A. D. 1856, came the defendants, Lewis Moore and Raybon, by attorney, and filed their answer herein, in words as follows:

Answer of Lewis Moore and Raybon.

ANGELINA B. EBERLY
vs.
GEORGE MOORE et als. } L. 131.

Answer of def'ts Moore and Raybon; filed November 25th, 1856.

W. P. DE NORMANDIE, *Clerk.*
J. A. & R. GREEN.

U. S. Dist. C't, Nov. Term, 1856.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al.

And now at this term of the court come the defendants, Lewis Moore and Raybon, and for answer to the petition of the plaintiff in the above entitled cause say, that they are not guilty of the trespasses therein laid to their charge in manner and form as therein stated, and of this they put themselves upon the country.

And further answering, they say that they have had more than three years' peaceable adverse possession of the land which they

occupy by regular chain of title from and under the sovereignty of the soil.

And for further answer, they say that they have had more than five years' peaceable adverse possession of said land, using and occupying the same, paying taxes thereon under deeds duly recorded in the county wherein said land is situate.

JOHN A. & R. GREEN,
Att'ys for Petitioners.

And afterwards, to wit, on the 27th day of November, 1856, the following order appears of record:

Order of Survey.

ANGELINA B. EBERLY et al.
vs.
GEORGE W. MOORE et al. } No. 131.

On motion of plaintiffs' attorney, it is ordered by the court that the district surveyor of the land district embracing Falls county, or his deputy residing in said county, be and he is, at the request of any party to this cause, (he paying therefor,) authorized to survey, within ten months next ensuing the locus in quo described and sued for in the above entitled cause, by running and more accurately making, defining, and describing the exterior lines, corners, distances, landmarks, monuments, and corners of the same, and such other lines appertaining to the premises as any such party (he paying therefor) may request; the said district surveyor, or his deputy, residing as aforesaid in Falls county, (whichever may execute this order,) is required to give reasonable notice to the parties prior to making his survey; and, further, to make full return of his doings in the premises in pursuance hereof into the clerk's office of this court on or before the next term thereof.

And afterwards, to wit, on the 29th day of Nov., 1856, came the defendants, A. G. Perry, Valentine Reiss, and James McDonald, jr., by their attorney, and filed their answer in words as follows:

Answer of A. G. Perry, Valentine Reiss, Jas. McDonald, jr.

ANGELINA B. EBERLY et al.
vs.
GEORGE W. MOORE et al. } L. 130.

Answer of A. G. Perry and others; filed Nov. 29, 1856.
W. P. DE NORMANDIE, *Clerk.*

ANGELINA B. EBERLY et al.
vs.
GEORGE W. MOORE et al.

UNITED STATES OF AMERICA,
District of Texas.

And now on this day come the defendants in the above entitled cause, A. G. Perry, Valentine Reiss, and James McDonald, jr., by their attorneys, and for plea and answer to plaintiffs' petition say, that it is not true as stated therein that said plaintiffs are citizens of the State of Kentucky, but defendants aver the contrary to be the fact, and say that each of said plaintiffs are residents and citizens of the State of Texas, and were residents and citizens as aforesaid of the said State of Texas at the date of filing and commencement of their said suit; wherefore defendants say that this court has no jurisdiction of said cause, and they pray the judgment of this court whether they shall further answer.

A. J. HAMILTON, *Attorney for Defendants.*

And afterwards, to wit, June 2d, A. D. 1857, the following order appears of record:

Order.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al. } No. 131.

And now come the parties, by their attorneys, and upon hearing it was ordered that def'ts have leave to abandon Moore's answer, and make Lewis Moore a party defendant.

And afterwards, to wit, on the 8th day of June, A. D. 1857, the following order was had, as appears from the minutes of the court.

Order.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al. } No. 131.

Now, on this day come the parties, by their attorneys, and the defendants, by their attorneys, moved the court for leave to abandon the answers of Moore and Rayburn, and plead in abatement. Plaintiffs by their attorney except to filing the plea. After hearing, the exception of the plaintiff was overruled, and the motion sustained by the court.

And on the same day the following pleas and affidavit were filed:

Plea and Affidavits of Lewis Moore and Cha's Rabon.

ANGELINA B. EBERLY
vs.
G. MOORE et als. } No. 131.

Filed June 8th, 1857.

MATTHEW HOPKINS, *Clerk.*

U. S. District Court for western district of Texas—June Term, 1857.

ANGELINA B. EBERLY
vs.
GEORGE MOORE et als.

And now comes Lewis Moore, one of the defendants in this cause, and being duly sworn according to law, says, that at the last term of this court he was sued as a trespasser by the plaintiffs in this cause. He says, that being at that time deceived by the allegations of the plaintiffs in their petition, that they were citizens of the State of Kentucky, he filed in conjunction with Charles Rayburn his answer denying said trespass; but he says that since the last term of this court, and since the filing of said answer, he has discovered that neither the said Angelina B. Eberly, nor Peyton Lytle, the plaintiffs, were ever residents of the State of Kentucky, but alleges that at the time of filing said petition they were both citizens of the State of Texas, and have so continued to be. And he alleges that the said suit being brought in the United district court for this district, is in fraud of the jurisdiction thereof, and is in fraud of the rights of your defendants.

He prays, therefore, that he may now be permitted to withdraw the plea heretofore filed by himself and Charles Rayburn; and that he and his co-defendant, Charles Rayburn, be now *be* allowed to file a plea to the jurisdiction of this court upon the matters set forth in this affidavit.

LOUIS MOORE.

Sworn to and supscribed before me in open court this 8th day of June, A. D. 1857.

MATTHEW HOPKINS, *Clerk.*

Plea in Abatement of Charles Raybon.

A. B. EBERLY et als.
vs.
G. MOORE et als.

Plea in abatement of Cha's Rayburn. Filed June 8th, 1857.
MATTHEW HOPKINS, *Clerk.*

In Dist. Ct. U. S.—June Term, 1857.

ANGELINA B. EBERLY
vs.
GEORGE MOORE et als.

And now, at this term comes the defendant, Charles Raybon, and prays the judgment of the court upon the petition filed in this cause; and the defendant says that at the last term of this court, having been sued by the plaintiff as a trespasser, and hold-

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ing possession of the land on which he resides as the tenant of Lewis Moore, he relied upon the said Moore to undertake the defence of the above entitled suit; and he further says, as he is informed and believes, that the said Moore, being deceived by the allegation of the plaintiffs' petition, that they, the plaintiffs, were citizens of Kentucky, filed an answer for him, the said Rayburn; that afterwards he discovered that the said plaintiffs were not citizens of the State of Kentucky, but that said allegation was fraudulently made to induce this court to take jurisdiction of said cause; that said plaintiffs are citizens of Texas, which defendant is ready verify. Wherefore he prays leave now to file this his plea in abatement, and prays judgment whether he should answer said petition, and that the same be dismissed.

J. A. & R. GREEN,
Att'ys of Def.

Lewis Moore's Affidavit.

This day came before me Louis Moore, as landlord and agent of the above named defendant, and makes oath that the facts stated in the above plea are true.

LOUIS MOORE.

Sworn to and subscribed before me this 8th day of June, A. D. 1857.

MATTHEW HOPKINS, *Clerk.*

EBERLY et al.
vs.
MOORE et al.

Plea in abatement of L. Moore. Filed June 8th, 1857.
MATTHEW HOPKINS, *Clerk.*

Plea in Abatement—Louis Moore.

Dist Court U. S.—June term, A. D. 1857.

ANGELINE B. EBERLY
vs.
GEORGE MOORE et al.

And now at this term comes the def't, Lewis Moore, in proper person, and prays the judgment of the court upon the petition filed in this cause, and he says that the allegation of citizenship in said plaintiffs' petition is not true; that said plaintiffs are not citizens of Kentucky, but are citizens of Texas; and for further particularity, he says that Peyton Lytle is a citizen of the State of Texas; and he further avers that Angelina B. Eberly is a citizen of Texas, and therefore this court has no jurisdiction over this cause.

Wherefore, he prays that said petition be dismissed for want of jurisdiction.

LOUIS MOORE.

Affidavit of Moore.

This day came before me Lewis Moore, the above named defendant, who makes oath, being duly sworn, that the facts stated in the above plea are true.

LOUIS MOORE.

Sworn to and subscribed before me, this 8th day of June, A. D. 1857.

MATTHEW HOPKINS, *Clerk.*

And afterwards, to wit, on the 9th day of June, A. D. 1857, came the plaintiffs by attorney, and filed their motion, herein endorsed, to wit:

ANGELINA R. EBERLY et al.
vs.
GEORGE MOORE et al.
} Motion No. 131.

Filed June 9th, 1857.

MATTHEW HOPKINS, *Cl'k.*

Exhibit D.

In words to wit:

Motion of Defendants Moore and Rabon.

ANGELINA R. EBERLY et als.
vs.
GEORGE MOORE et als.
} No. 131.

D. C. U. S. for the W. district of Texas, June 7, 1857, at Austin.

And now come the said plaintiffs in the above entitled cause, and because the said defendants, Lewis Moore and Charles Rabon, have abandoned their answer by them pleaded and filed on the 25th day of November, 1856, in this cause, and are now without any answer or defence, they, the said plaintiffs, move the court for judgment by default, to be entered against them, the said defendants.

By ALLEN & HALE,
Their Att'ys.

And now, to wit, on the day and year aforesaid, the jury having been empanelled, to wit: William A. Gold, William H. Carr, George W. Glasscock, John D. Kerfoot, Eliphius Spencer, Alvin M. Dean, Wm. W. Grover, James D. Eastern, Sam'l B. Savage, Robert Bean, Narcissa Leal, James G. Swisher, to try the issues of this cause, and the evidence and the argument of counsel having been closed, the court proceeded to charge the jury as follows, (the said charge being in writing and endorsed "Filed June 9th, 1857—M. Hopkins, clerk"—and is in words to wit:)

Charge of the Court.

ANGELINA B. EBERLY et als.
vs.
JAMES MARLIN et al.

On Plea in Abatement.

GENTLEMEN OF THE JURY:

To give the court jurisdiction of this case, it is necessary that the plaintiffs should be non-residents, or citizens of the State of Texas. The petition alleges that two of the plaintiffs, viz: Mrs. Eberly and Peyton Lytle, are citizens of the State of Kentucky. This allegation is denied by the plea in abatement, which avers them to be citizens of the State of Texas. Upon this issue arises the question of fact which you are to determine.

When a domicile or citizenship is once acquired in a State, a mere temporary removal will not affect it, and a citizenship elsewhere will not be acquired without a corresponding removal, accompanied with a bona fide intent for that purpose. This intent the jury must determine from all the facts and circumstances in evidence before them. The jury will simply state in their verdict whether, from the proof before them in this case, Mrs. Eberly and her grandson, Peyton Lytle, or either of them, were citizens of the States of Kentucky or Texas on the 4th Nov., 1855.

T. H. DUVAL,
U. S. Dist. Judge.

Instruction asked by Defendants.

The defendants ask the court to charge, that if Texas was the natural domicile of Peyton Lytle, that is, the domicil of his birth, and if it remained so until the death of his parents, then it was not in the power of the grandmother to change his domicile by carrying him to Kentucky, and thus to confer upon him that citizenship which would give this court jurisdiction.

JNO. A. & R. GREEN,
For Def'ts.

The above instruction is given.

T. H. DUVAL,
U. S. Dist. Judge.

Verdict.

And the jury having heard the evidence and argument of counsel and the charge of the court, retired, and returned into court with the following verdict, which is in words, to wit:

We, the jury, find from the law and the evidence, that the domicile or residence of the plaintiffs in this case, Angelina B. Eberly and her grandson, Peyton Lytle, never has been changed from the

State of Texas, and that their domicile or residence was in the State of Texas at the commencement of this suit, Nov. 4th, 1855.

WM. A. GOLD, *Foreman.*

Austin, June 9th, 1857.

Entry, Verdict and Judgment.

And on the same day, the following entry appears of record upon the minutes of this court, in words, to wit:

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et al.

This day came the plaintiffs, by their attorneys, and the said Lewis Moore and Charles Rabon, two of the defendants, by their attorneys, and the said defendants having, by leave of the court, granted on their affidavit and motion filed on the 8th day of June, and sworn to by said Moore, abandoned their answer, filed by them at the last term, to wit, on the 25th day of November, 1856, moved the court for leave to file pleas in abatement to the jurisdiction of the court; which motion was opposed by the plaintiff, but was granted by the court, to which the plaintiffs excepted. And the said defendants having filed their said pleas, pursuant to leave granted on their said motion, the plaintiffs thereupon moved the court for judgment by default, to be rendered against them for the want of a defence or answer; which motion being overruled by the court, the pl'ffs excepted.

And now the plaintiffs having filed their bills of exceptions, and regarding said pleas as a nullity, refused to take issue upon or notice of the same; the said defendants thereupon proceeded ex parte, and a jury being empanelled, to wit:

W. A. Gold, foreman, Wm. H. Carr, George W. Glasscock, John D. Kerfoot, Eliphus Spencer, Alvin M. Dean, William W. Grover, James B. Easton, Samuel B. Savage, Robert Bean, Narcissa Leal, James G. Swisher, twelve good and lawful men of the western district of Texas, to try this cause upon the petition and pleas in abatement aforesaid; and the same being read to them by the said defendants, and evidence being by them adduced to prove the allegations in their said pleas to be true, the same was submitted to the jury by them, the said defendants, (proceeding ex parte as aforesaid,) under the charge of the judge; whereupon the said jury retired, and returned into court the following verdict:

We, the jury, find from the law and the evidence, that the domicile or residence of the plaintiff in this case, Angelina B. Eberly and her grandson, Peyton Lytle, never has been changed from

the State of Texas, and that their domicile or residence was in the State of Texas at the commencement of this suit, Nov. 4th, 1855.

Austin, June 9th, 1857.

W. A. GOLD,
Foreman.

It is therefore considered by the court that the plaintiff take nothing by his suit in this behalf, that the same be dismissed, and the said defendants have and recover from the plaintiffs all their costs herein expended, which are taxed at dollars, and for which execution may issue.

And the plaintiffs, by their attorneys, having prepared their first and second bills of exceptions, time being granted therefor, they were signed and sealed by the judge, *are* are in words, to wit:

Plaintiffs' first Bill of Exceptions.

U. S. D. C. for the western district of Texas, at Austin—June Term, 1857.

Trespass to try Title, etc.

ANGELENA B. EBERLY et al.
vs. } No. 131.
GEORGE MOORE et al.

Be it remembered, that on the 8th day of June, 1857, the defendants, Louis Moore and Charles Raybon, by their attorney, asked leave to withdraw their answer previously filed in the above entitled cause, and file a plea in abatement to the jurisdiction of the court, to which the plaintiffs, by their att'y, objected; whereupon the court made the following entry:

ANGELINA B. EBERLY et al.
vs. } No. 131.
GEORGE MOORE et al.

Now on this day came the parties by their attorneys, and the defendants, by their attorneys, moved the court for leave to abandon the answers of Moore and Raybon, and *and* plead in abatement. Plaintiffs, by their attorneys, except to filing the plea. After hearing, the exception of the plaintiffs was overruled, and the motion sustained by the court.

And afterwards, to wit, on the 9th day of June, A. D. 1857, this cause having been called for trial as to said Lewis Moore and Charles Raybon, two of the defendants therein, thereupon the said defendants, having by leave of court abandoned their answer and the several pleas therein contained by them, pleaded and filed at the last term of the district court of the United States for the district of Texas, holden at Austin aforesaid, on the 25th day of November, 1856, which answer, with the several pleas therein con-

tained, together with filing endorsed thereon, are in the words and figures following—that is to say:

ANGELINA B. EBERLY
vs. } L. 131.
GEORGE MOORE et al.

Answer of def'ts, Moore and Raybon. Filed Nov. 25th, 1856.
W. P. DE NORMANDIE,
Clerk.

U. S. Dist. Ct.—Nov. Term, 1856.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al.

And now at this term of the court come the defendants, Lewis Moore and Raybon, and for answer to the petition of the plaintiff in the above entitled cause say, that they are not guilty of the trespasses therein laid to their charge in manner and form as therein stated, and of this they put themselves upon the country.

And further answering, they say that they have had more than three years' peaceable adverse possession of the land which they occupy, by regular chain of title from and under the sovereignty of the soil.

And for further answer, they say that they have had more than five years' peaceable adverse possession of said land, using and occupying the same, paying taxes thereon under deeds duly recorded in the county wherein said land is situate.

JOHN A. & R. GREEN,
Attorneys for Petitioners.

And the said defendants having abandoned their said answer by their affidavit, a motion in writing, signed and sworn to by the said Lewis Moore, filed on the 8th day of June, prayed and moved the court that they, the said defendants, be allowed to file a plea to the jurisdiction of this court, for reasons and upon the matters set forth in said affidavits, which affidavit and motion, with the filing endorsed thereon, are in the words and figures following, to wit:

ANGELINA B. EBERLY et al.
vs. } No. 131.
G. MOORE et al.

Exhibit "A."

Filed June 8th, 1857.

MATTHEW HOPKINS, *Clk.*

U. S. Dist. Court for western district of Texas—June Term, 1857.

ANGELINA B. EBERLY
vs.
GEORGE MOORE et al.

And now comes Lewis Moore, one of the defendants in this cause, and being duly sworn, says, that at the last term of this court he was sued as a trespasser by the plaintiffs in this cause. He says, that being at that time deceived by the allegation of the plaintiffs in their petition, that they were citizens of the State of Kentucky, he filed in conjunction with Charles Raybon his answer denying said trespass; but he says that since the last term of this court, and since the filing of said answer, he has discovered that neither the said Angelina B. Eberly, nor Pey*born* Lyttle, the plaintiffs, were ever residents of the State of Kentucky, but alleges and charges that at the time of filing said petition they were both citizens of the State of Texas, and have so continued to be. And he alleges that said suit being brought in the United district court for this district is in fraud of the jurisdiction thereof, and in fraud of the rights of your defendants.

He prays, therefore, that he may now be permitted to withdraw the plea heretofore filed by himself and Charles Raybon; and that he and his co-defendant, Charles Raybon, be now *be* allowed to file a plea to the jurisdiction of this court upon the matters set forth in this affidavit.

LOUIS MOORE.

Sworn to and subscribed before me in open court this 8th day of June, A. D. 1857.

MATTHEW HOPKINS,
Clerk.

Which motion and prayer of the said defendants, to be allowed to file a plea to the jurisdiction of this court as aforesaid, the plaintiffs opposed and objected to, but the judge overruled the said objections, and permitted the said defendants to file such plea; and thereupon the said defendants pleaded and filed their said pleas in the words and figures following, to wit:

"Exhibit B."

A. B. EBERLY et al.
vs.
G. MOORE et al.

Plea in abatement of Chas. Raybon. Filed June 8th, 1857.
MATTHEW HOPKINS, *Clerk.*

In Dist. C't U. S.—June Term, 1857.

ANGELINA B. EBERLY
vs.
GEORGE MOORE et al.

And now, at this time, comes the defendant, Charles Raybon, and prays the judgment of the court upon the petition filed in this cause; and the defendant says that at the last term of this court, having been sued by the plaintiff as a trespasser, and holding possession of the land on which he resides as the tenant of Lewis Moore, he relied upon the said Moore to undertake the defence of the above entitled suit; and he farther says, as he is informed and believes, the said Moore being deceived by the allegation of the plaintiffs' petition, that they, the plaintiffs, were citizens of Kentucky, filed an answer in said cause for him, the said Raybon; that afterwards he discovered that the said plaintiffs were not citizens of the State of Kentucky, but that said allegation was fraudulently made to induce this court to take jurisdiction of said cause; that said plaintiffs are citizens of Texas, which defendant is ready to verify. Wherefore he prays leave now to file this his plea in abatement, and prays judgment whether he should answer said petition, and that the same be dismissed.

J. A. & R. GREEN,
Att'y of Def.

This day came before me Lewis Moore, as landlord and agent of the above named defendant, and makes oath that the facts stated in the above plea are true.

LOUIS MOORE.

Sworn to and subscribed before me this 8th day of June.

MATTHEW HOPKINS,
Clerk.

Exhibit C.

Dist. Court U. S.—June Term, A. D. 1857.

Plea in abatement of L. Moore. Filed June 8th, 1857.

MATTHEW HOPKINS,
Clerk.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al.

And now, at this term, comes the defendant, Lewis Moore, in proper person, and prays the judgment of the court upon the petition filed in this cause, and he says that the allegation of citizenship in said plaintiffs' petition is not true; that said plaintiffs are not citizens of Kentucky, but are citizens of Texas; and for further particularity he says that Pey*born* Lyttle is a citizen of the State of Texas, and he further avers that said Angelina B. Eberly is a citizen of Texas, and therefore this court has no jurisdiction over this cause.

Wherefore he prays that said petition be dismissed for want of jurisdiction.

LOUIS MOORE.

Sworn to and subscribed before me this 8th day of June, A. D. 1857.

MATTHEW HOPKINS,
Clerk.

To which opinion of the judge, in overruling the said objections of the plaintiffs, had in permitting the said defendants to file their said pleas, and in granting the prayer of the said motion, the plaintiffs then and there excepted, and thereupon they present to the judge this their first bill of exceptions, and pray that the same be signed, sealed, allowed, and made a part of the record in this cause.

By ALLEN & HALE,
Their Attorneys.

Which is done accordingly.

THO. H. DUVAL, [SEAL.]
U. S. Dist. Judge, &c.

Plaintiffs' Second Bill of Exceptions.

A. B. EBERLY et al.
vs.
GEORGE MOORE et al. } No. 130.

Plaintiffs' 2d bill of exceptions. Filed June 9th, 1857.
MATTHEW HOPKINS, *Clerk.*

Dist. Court of the U. S. for the W. dist. of Texas—June term, 1857, at Austin.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et al. } No. 131.

Be it remembered, on the 9th day of June, 1857, said case having been called for trial, as to Lewis Moore and Charles Raybon, two of the defendants therein, and they having abandoned their answer, and the pleas therein by them pleaded and filed in the district court of the United States for the district of Texas at a term thereof held at Austin, on the 25th day of November, 1856, in said cause, and having pleaded and filed therein by leave of the court (though objected to by the plaintiffs) certain pleas to the jurisdiction of the court set forth in the plaintiffs' first bill of exceptions in this cause, the said plaintiffs thereupon, on the said 9th day of June, 1857, by their written motion by them filed, which motion is in the words and figures following, that is to say:

"Exhibit D."

A. B. EBERLY et al.
vs.
GEORGE MOORE et al. } No. 131.

Motion No. 131. Filed June 9th, 1857.

M. HOPKINS, *Clerk.*

D. C. U. S. for the W. dist. of Texas—June 7th, 1857, at Austin.

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et als. } No. 131.

And now come the said plaintiffs in the above entitled cause, and because the said defendants, Louis Moore and Charles Raybon, have abandoned their answer by them pleaded and filed on the 25th day of November, 1851, in this cause, and are now without any answer or defence, they, the said plaintiffs, move the court for judgment by default to be entered against them, the said defendants.

By ALLEN & HALE,
Their Att'ys.

Moved the court for judgment by default to be entered against the said defendants; which motion being heard, the judge then and there overruled and refused to allow the same, or grant the prayer thereof; to which opinion of the judge in overruling the said motion, and in refusing as aforesaid, the plaintiffs then and there excepted, and thereupon they present this their second bill of exceptions, and pray that the same be signed, sealed, allowed, and made a part of the record in this cause.

By ALLEN & HALE,
Their Att'ys.

Which is accordingly done.

THO. H. DUVAL, [SEAL.]
U. S. Dist. Judge West'n Dist. of Texas.

Withdrawal of Pleas and Disclaimer J. McDonald, jr., and Valentine Reiss and A. G. Perry.

And afterwards, to wit, on the 11th day of June, A. D. 1857, came A. G. Perry, attorney for the defendants, and filed a disclaimer, which is endorsed, to wit:

A. B. EBERLY et al.
vs.
GEORGE MOORE et al.

Plea of J. McDonald, jr., and Valentine Reiss. Filed June 11th, 1857.

M. HOPKINS, *Clerk.*

I consent to the abandonment of the answers herein mentioned, and to the filing of the disclaimers on the part of the defendants within named.

E. ALLEN,
For Pl'ffs.

And is in words, to wit:

THE STATE OF TEXAS.

District Court of the United States for the western district of Texas, at Austin.

A. B. EBERLY et als.
vs.
GEORGE MOORE et als.

And now at this term of the court comes James McDonald, jr., and Valentine Reiss, and A. G. Perry, and by leave of the court first had and obtained, and with the assent of plaintiffs' attorney, withdraw and abandon their plea by them heretofore pleaded, and disclaim setting up any title or interest as against the claims of the said plaintiffs in and to the land sued for and claimed in plaintiffs' petition, and pray to be discharged with their reasonable costs.

A. G. PERRY,
For Def'ts.

Entry and Order.

And on the same day the following entry appears upon the minutes of the court in words, to wit:

ANGELINA B. EBERLY et al.
vs.
GEORGE MOORE et als. } No. 131.

This day came the plaintiffs, by their attorneys, and came also the defendants, James McDonald, jr., Valentine Reiss and A. G. Perry, and having, by leave of the court and with the consent of the plaintiffs, in and by their answer this day filed, withdrawn and abandoned their plea by them herein and at the last term pleaded, and having by their said answer disclaimed setting up any title or interest as against the plaintiffs in or to the tract of land by them claimed and described in and by their said petition:

It is therefore considered by the court that this suit be dismissed as to them, the said defendants, and that they recover their costs of suit in this cause, to be taxed at dollars, and the defendant, J. R. McDonald, being three times solemnly called, came not but made default; it is therefore considered by the court that the plaintiffs have and recover against him the tract of land sued for and described in their petition, and the possession thereof,

with the appurtenances, together with their costs of suit herein to be taxed, and that they have their writ of possession and execution.

And afterwards, to wit, on the 20th day of Oct., 1857, there was filed the following order of J. R. McDonald, one of the defendants herein, in words to wit:

J. R. McDonald—Order to issue order of survey.

CHAPEL HILL, WASHINGTON Co., TEXAS,
Oct. 7th, 1857.

DEAR SIR: If the order of survey in the cause of Eberly et al. vs. George Moore et als. has not been returned, please issue another order directed to W. P. Hunnicut, surveyor of Falls county. Direct to Marlin, Falls county, Texas, to

Yours, truly,

J. R. McDONALD.

The CLERK *of the District Court*
of the United States, at Austin.

Order of Continuance.

And afterwards, to wit, on the 18th day of January, A. D. 1858, the following order was had, as appears from the minutes of the court, to wit;

ANGELINA B. EBERLY et als.
vs.
GEORGE MOORE et al. } No. 131—"Continued."

Final Judg't.

And afterwards, to wit, on the fifth day of February, the following entry appears upon the records of the minutes of the court, in words, to wit;

ANGELINA B. EBERLY et al.
vs.
GEORGE W. MOORE et als. } No. 131. *No.* 131.

Now, on this day came the parties, by their attorneys, and the continuance heretofore entered having been set aside, and the court proceeding to render final judgment herein, and it appearing to the court here that judgment, by default, was rendered at a former term against the defendant, J. R. McDonald, and that the defendants, A. G. Perry, Reiss, James McDonald, sr., James McDonald, jr., have, upon their several disclaimers, by them filed and pleaded herein, recovered judgment for their costs of suit against the plffs,, and that judgment was rendered in favor of the defts,, Lewis Moore and Charles Raybon, at the last term of this court, (to wit, on the 8th day of June, A. D. 1857,) against the said plaintiffs, as by the record thereof is herein shown, and the plaintiff having waived and renounced all claim for damages

against the said J. R. McDonald herein, and having discontinued, as to all the defendants hereto, excepting the forenamed—that is to say, discontinued as to Charles V. Fortune, George Moore, Willis L. Long and James Evans—it is, therefore, considered by the court, that the plaintiffs have and recover against the said J. R. McDonald the tract of land in the aforesaid petition described and mentioned, together with their costs of suit, and that a writ of possession issue; also, that the said defendants, A. G. Perry, Reiss, James McDonald, senr., and James McDonald, jr., having disclaimed as aforesaid, and the said defendants, Charles V. Fortune, George Moore, Willis L. Long, and James Evans, as to whom the plaintiffs have discontinued as aforesaid, do severally recover of the plaintiffs their costs of suit, and have execution therefor; and it is further considered by the court, that as to said Lewis Moore and Charles Rayborn, the plaintiffs take nothing by their suit in this behalf; that the same be dismissed, and that they, the said Moore and Raybon, have and recover of the plaintiffs their costs herein expended.

Copy of Bond for Writ of Error.

And afterwards, to wit, on the 3d day of August, 1858, came Allen & Hale, attorneys for the plaintiffs, and filed their bond and copy of writ of error endorsed, to wit:

ANGELINA B. EBERLY et al.
vs.
LEWIS MOORE et al. } No. 131. Law.

Bond on writ of error. Filed August 8th, 1858.
MATTHEW HOPKINS, *Clerk.*

And in words as follows:

Know all men by these presents, that we, Angelina B. Eberly, Ebenezer Allen and William G. Hale, all of the State of Texas, are held and firmly bound unto Lewis Moore and Charles Rayburn, in the full and just sum of three hundred dollars, to be paid to the said Lewis Moore and Charles Rabun, their certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this the twentieth day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

Whereas lately, at a term of the district court of the United States for the western district of Texas, held at Austin, in said district, in a suit depending in said court, between Angelina B. Eberly and Peyton Lytle, the latter appearing by his guardian and next friend, the said Angelina B. Eberly, as plaintiffs, and George Moore, G. W. Morgan, and Mary A. Morgan, his wife, Chas. Rabun, James R. McDonald, sr., James R. McDonald, jr, John R.

McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Zachariah Hammond, John J. Long, Varnon, and Evans, and Charles V. Fortune, as defendants, a judgment was rendered upon a plea in abatement to the jurisdiction of said court against the said Angelina B. Eberly and Peyton Lytle, and in favor of the said Lewis Moore and Charles Rabun, who had severed in their pleading from the other defendants, and the said judgments was repeated and confirmed by the final judgment rendered in said suit so far as the said Lewis Moore and Charles Rabun were concerned; and the said Angelina B. Eberly and Peyton Lytle have obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the said judgment in the said suit, so far as the said Lewis Moore and Charles Rabun are concerned, and a citation directed to the said Lewis Moore and Charles Rabun, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Angelina B. Eberly and Peyton Lytle shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

ANGELINA B. EBERLY, [SEAL.]
By her Att'y in fact.
M. G. HALE,
WILLIAM G. HALE, [SEAL.]
EBENEZER ALLEN. [SEAL.]

Sealed and delivered in presence of—
F. J. PARKER.

Approved by—

THO. H. DUVAL,
U. S. Dist. Judge, West'n Dist. Texas.

Copy of Writ of Error.

And on the same day, the attorneys of the plaintiffs filed a true copy of the writ of error, duly allowed by the judge, and endorsed in words to wit:

ANGELINA B. EBERLY et al.
vs.
LEWIS MOORE et al.

Writ of error copied and filed August third, 1858.

MATTHEW HOPKINS, *Clerk.*

And which is in words, to wit:

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judge of the District Court of the United States for the western district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, at Austin, in said district, between Angelina B. Eberly and Peyton Lytle, appearing by his next friend, the said Angelina B. Eberly, as plaintiffs, and George Moore, G. W. Morgan and Mary A. Morgan, his wife, Charles Rabun, James McDonald, sr., James McDonald, jr., John R. McDonald, Rice, A. G. Perry, Lewis Moore, Willis L. Long, Zachariah Hammond, John J. Long, Varnon, and Evans, and Charles V. Fortune, as defendants, in which the said defendants severed in their pleading, and judgment was rendered upon a plea of the said Lewis Moore and Charles Rabun against the said Angelina B. Eberly and Peyton Lytle, a manifest error hath happened, to the great damage of the said Angelina B. Eberly and Peyton Lytle, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being impeded, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this the third day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

Allowed by—

THO. H. DUVAL,
Dist. Judge U. States, West'n Dist. of Texas.

Witness Matthew Hopkins, clerk, and seal of court, at Austin, [SEAL.] this third day of August, A. D. 1858.

MATTHEW HOPKINS, *Clerk.*

Copy of Citation in Error.

Citation in error issued at the same time, to wit, the third day

of August, 1858, the words of which and the endorsements of returns upon which are, to wit:

The United States of America to Lewis Moore and Charles Rabon, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error, a copy whereof is filed in the clerk's office of the district court of the United States for the western district of Texas, at Austin, wherein Angelina B. Eberly and Peyton Lytle are plaintiffs and you are defendants in error, to show cause, if any you can, why the judgment rendered in your favor against the said plaintiff in error in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas H. Duval, the judge of the district court of the United States for the western district [SEAL.] of Texas, this third day of August, in the year of our Lord one thousand eight hundred and fifty-eight.

THO. H. DUVAL,
Dist. Judge U. S. West. Dist. Texas.

(And endorsed)—

Returns of Service.

UNITED STATES OF AMERICA,
Western District of Texas, Austin.

On the seventeenth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, personally appeared Thomas W. Masterson before me, the subscriber, and makes oath that he delivered a true copy of the within citation to John Alexander Green, attorney of record of the defendants in error, on the day aforesaid.

THOS. W. MASTERSON.

Subscribed and sworn to before me.

MATTHEW HOPKINS,
U. S. Commissioner W. Dist. Texas.

(And endorsed)—

THE STATE OF TEXAS,
McLennan County.

Before me, Marcus O. Herring, a notary public, duly commissioned, qualified, and bonded within and for said county and State, personally appeared William Herring, to me well known, who makes oath that on the fourth day of September, in the year of our Lord one thousand eight hundred and fifty-eight, he delivered

a true copy of the within citation to the within named Lewis Moore, and also to Alexander Rabon, who acknowledged that he was the party sued and cited as and in the name of Charles Raburn, as one of the defendants herein named, and said William Herring swears that he found the said Alexander Raburn in possession as tenant under the said Lewis Moore, said Lewis Moore and Alexander Raburn being defendants in error in the case of Angelina B. Eberly et al. vs. Lewis Moore et al., No. 131.

In witness whereof the said William Herring hereto subscribes his name in my presence.

WM. HERRING.

Subscribed and sworn to before me this 6th day of September, A. D. 1858.

M. D. HERRING,
Notary Public.

To certify all which, witness my hand and the impress of my seal of office, at office in Waco, day and date above written.
[SEAL.]

M. D. HERRING,
Notary Public, McLennan Co., Texas.

UNITED STATES OF AMERICA,
Western District of Texas.

District Court of the United States holding sessions at Austin.

I, Matthew Hopkins, clerk of the district court of the United States for the western district of Texas, at Austin, hereby certify that the foregoing fifty-nine pages is a true and perfect transcript of the record and all the proceedings had in case of Angelina B. Eberly et al. vs. George Moore et al., No. 131, law, wherein Angelina B. Eberly and Peyton Lytle are plaintiffs, and George Moore, Lewis Moore, Charles Raybon, and others are defendants.

In testimony whereof I hereunto set my hand and affix the seal of the said court. Done at the city of Austin this twenty-seventh day of September, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-third year of the independence of the United States of America.
[L. S.]

MATTHEW HOPKINS, *Clerk.*

Filed 16 Nov., 1858.